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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

LOREN PALSGAARD, ET AL.,

Plaintiffs,

v.

SONYA CHRISTIAN, ET AL.,

Defendants.

Civil Action No.:

1:23-cv-01228-ADA-CDB

PLAINTIFFS' CONSOLIDATED REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Date: October 2, 2023
Time: 1:30 pm PDT
Dept: Courtroom 1, 8th Floor
Judge: The Honorable Ana de Alba

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Under Judge Alba's Standing Order 1.c. and September 18 order, (ECF No. 27), Plaintiffs Loren Palsgaard, James Druley, Michael Stannard, David Richardson, Bill Blanken, and Linda de Morales respectfully submit this Consolidated Reply Brief in Support of their Motion for Preliminary Injunction in response to the District Defendants' opposition brief (Dist. Opp'n) (ECF No. 24) and the State Defendants' opposition brief (State Opp'n) (ECF No. 23).[1]

INTRODUCTION

Defendants characterize the DEIA Rules and Faculty Contract as merely aspirational statements of their commitment to diversity, asserting that Plaintiffs will not be forced to change their curriculum and how they teach in the classroom. But the plain text of the DEIA Rules and Faculty Contract contradict their argument. So do the Implementation Guidelines the State Defendants issued, which must be (and have been) incorporated by the District Defendants into the Faculty Contract.[2]

In fact, community college professors across the State must endorse contested DEIA and "anti-racism" principles and incorporate them into their curriculum. They are expected to "acknowledge," "promote," "incorporate," "advocate for," and "advance" DEIA principles which must be "weav[ed] . . . into into every course." Verified Compl. Ex B, D. Faculty are warned against "weaponizing academic freedom" to "inflict curricular trauma" on students by teaching concepts or assigning readings that are inconsistent with the State's mandated DEIA viewpoints. This is unconstitutional.

[1] The State Defendants are officials in the California Community Colleges and the District Defendants are officials in the State Center Community College District.

[2] The Implementation Guidelines include a list of DEIA *Competencies and Criteria*, a statement of *Model Principles* on the implementation of DEIA in the classroom, a *Glossary* that defines key DEIA terms, and a letter transmitting the DEIA Rules and the *Competencies and Criteria* (and directing attention to the *Glossary*) to the districts. Verified Compl. Ex. B-E.

Plaintiffs are six tenured State Center professors who disagree with the DEIA viewpoints mandated by the State. They seek a preliminary injunction because, as a direct consequence of the DEIA Rules and Faculty Contract, they must either drastically change what they teach and endorse DEIA doctrines they reject or risk losing their jobs. If the DEIA Rules and Faculty Contract remain in effect, Plaintiffs' speech will be chilled and they will suffer irreparable harm.

The State and District Defendants try to shirk responsibility for the DEIA Rules and the Faculty Contract they adopted by advancing a hodgepodge of procedural and jurisdictional objections. These arguments lack merit. Some are frivolous, like the District Defendants' claim that Plaintiffs did not bring this lawsuit under 42 U.S.C. § 1983, even though the Complaint expressly invokes § 1983. Other objections rest on a fundamental misreading of what the DEIA Rules and Faculty Contract require. Ultimately, the State Defendants blame the District and the District Defendants blame the State. But the truth is both sets of Defendants are responsible for the blatant violation of Plaintiffs' First Amendment rights and only a preliminary injunction running against both sets of Defendants will remedy Plaintiffs' injury.

Ultimately in opposing Plaintiffs' motion, Defendants fail to submit any evidence that the DEIA Rules and Faculty Contract will not be implemented in a manner that burdens the First Amendment, urging the Court to simply trust their assertions that this is so. But academic freedom at our nation's colleges and universities is of vital importance, and First Amendment freedoms cannot rest on Defendants' say so. A preliminary injunction is needed to ensure that Defendants cannot impose a "pall of orthodoxy" on California's classrooms.

ARGUMENT

Plaintiffs first respond to procedural objections regarding § 1983 in Section I. Plaintiffs next address Defendants' objections to standing and ripeness in Section II. As shown in Section III, Plaintiffs are likely to succeed on the merits on each of their claims. Next, Section IV

responds to Defendants' arguments related to waiver of Plaintiffs' constitutional rights. Finally, Plaintiffs address the remaining preliminary injunction factors in Section V.

I. PLAINTIFFS' CLAIMS ARE PROPERLY PLED UNDER § 1983.

Contrary to the District Defendants' assertions, *see* Dist. Opp'n at 14, Plaintiffs expressly invoked § 1983 in their Complaint. *See* Verified Compl. ¶ 19 ("This action arises under the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202."). Plaintiffs also specifically referenced the elements of a § 1983 claim in their Complaint, alleging "(1) that a right secured by the Constitution or laws of the United States was violated," and "(2) that the alleged violation was committed by a person acting under the color of state law." *Long v. Cnty. of Los Angeles,* 442 F.3d 1178, 1185 (9th Cir. 2006); *see* Verified Compl. ¶¶ 36–37, 174–322. That is all that is required under Fed. R. Civ. P. 8(a)(2). *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 11 (2014) ("[N]o heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly in order to state a claim.").[3]

II. PLAINTIFFS HAVE STANDING TO CHALLENGE THE DEIA RULES AND FACULTY CONTRACT AND FACE AN IMMINENT RISK OF HARM.

Plaintiffs satisfy each of the elements of Article III. They are suffering "concrete and particularized" First Amendment injuries that are "fairly traceable" to State Defendants' enactment of the DEIA Rules and to District Defendants' implementation of the DEIA Rules through the Faculty Contract. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). Furthermore, Plaintiffs' injuries will likely be redressed by their requested judicial relief. *Id.* at 561. Plaintiffs'

[3] The cases Defendants cite are irrelevant. Dist. Opp'n at 14. Two dismiss constitutional claims when the plaintiffs' claims under § 1983 were barred by the statute of limitations. *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992); *Ward v. Caulk*, 650 F.2d 1144, 1147 (9th Cir. 1981). The third was withdrawn and, upon rehearing, the Ninth Circuit found that the plaintiff did state a cause of action under § 1983. *Bretz v. Kelman*, 722 F.2d 503, 504 (9th Cir. 1983), *opinion withdrawn sub nom. Haygood v. Younger*, 729 F.2d 613 (9th Cir. 1984), and *on reh'g*, 769 F.2d 1350 (9th Cir. 1985).

injuries are also ongoing and imminent and therefore their request for a preliminary injunction is ripe.

A. Plaintiffs are suffering a constitutionally cognizable injury.

As detailed in Plaintiffs' preliminary injunction brief (Pl. Opening Br., ECF No. 13-1), the First Amendment protects faculty members' "speech related to scholarship and teaching," as well as the right of students to be exposed to diverse opinions in the classroom. Pl. Opening Br. at 18 (quoting *Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014)); *see also Thunder Studios, Inc. v. Kazal*, 13 F.4th 736, 743–44 (9th Cir. 2021) ("The First Amendment protects speech for the sake of both the speaker and the recipient.").

State Defendants ignore these well-established rights and claim that the DEIA Rules merely set out aspirational government speech. State Opp'n at 14. In making this assertion, the State Defendants ignore the Ninth Circuit's seminal decision in *Demers*, failing to cite it even once. In *Demers*, the Ninth Circuit definitively rejected the argument that a professor's "speech related to scholarship or teaching" was unprotected by the First Amendment on the grounds it was attributable to the university or undertaken pursuant to job duties. *Demers*, 746 F.3d at 406.

Instead, State Defendants rely on cases that pre-date *Demers* and have nothing to do with classroom teaching. State Opp'n at 13–14. For instance, in *Downs v. Los Angeles Unified Sch. Dist.*, 228 F.3d 1003, 1013 (9th Cir. 2000), a high school teacher sought to post his own non-curricular material on a school bulletin board contradicting the viewpoint posted by the school. The Ninth Circuit held that the bulletin boards contained government speech and the school district could dictate what viewpoints could be expressed on them. *Id.* But a high school teacher's posts on a bulletin board are a far cry from a college professor's in-class discussions.

Meanwhile in *Bair v. Shippensburg University*, students sought to enjoin several university documents declaring the university's commitment to principles like "social justice and

equality." 280 F. Supp. 2d 357, 362–63 (M.D. Pa. 2003). But this language did not regulate student speech at all. It merely sought "to advise the student body of the University's ideals and [was] therefore aspirational rather than restrictive." *Id.* at 370–71. A university stating its own ideals is one thing. A university mandating that faculty teach and preach those ideals in their classrooms or risk professional repercussions is something else entirely.

But that is exactly what the DEIA Rules, Implementation Guidelines, and Faculty Contract do—dictating what professors may say in the classroom and evaluating faculty performance based on how well they embrace "DEIA and anti-racist principles." Plaintiffs must incorporate "DEIA and anti-racist principles," like "anti-racism" and "intersectionality" into their curriculum. Verified Compl. Exs. A, F; Pl. Opening Br. at 3–5. According to the *Competencies and Criteria*, this includes at a minimum:

> (1) "Acknowledge[ing]" the "diverse, fluid, intersectional nature" of identity;
> (2) "Demonstrate[ing]" their "ongoing awareness and recognition" of "structures of oppression and marginalization,"
> (3) "Seek[ing] DEI and anti-racist perspectives" and continually improving their "own commitment to DEI and acknowledgment of any internalized personal biases;"
> (4) "Promot[ing]" and "incorporat[ing]" a "DEI and anti-racist pedagogy" into their teaching;
> (5) "[P]romot[ing] a race-conscious and intersectional lens";
> (6) Being "culturally affirming;" and
> (7) "Advocat[ing] for and advanc[ing] … systemic and cultural change."

Verified Compl. Ex. B. Under the *Model Principles*, DEIA principles and a "social justice lens" must be "[w]eav[ed] into every course." Professors are warned not to "'weaponize' academic freedom" or "inflict curricular trauma on our students." Verified Compl. Ex. D. And the *Glossary* warns that viewpoints that Plaintiffs embrace such as "color blindness" and "merit" are perpetuating racism or white supremacy. Verified Compl. Ex. E. Therefore, the DEIA Rules are not "aspirational rather than restrictive," *Bair*, 280 F. Supp at 362–363, and instead directly restrict and compel "speech related to scholarship and teaching," *Demers*, 746 F.3d at 406.

Defendants claim that the Implementation Guidelines are merely advisory and cannot be used to interpret the DEIA Rules and Faculty Contract. State Opp'n at 14–15; Dist. Opp'n at 17–18. But under the DEIA Rules, the Chancellor "*shall* adopt and publish guidance describing DEIA competencies and criteria." Cal. Code of Regs. Tit. 5, § 53601(a)–(b) (emphasis added). And that is exactly what the Chancellor has done by adopting the Implementation Guidelines—including the *Competencies and Criteria*, the *Model Principles*, and the *Glossary*. Each was published by the Chancellor's office "in collaboration with system stakeholder groups," precisely as § 53601 directs. *Id.*; Verif. Compl. Ex. B. These documents therefore qualify as guidance concerning "DEIA competencies and criteria" that "shall be used" by districts under § 53601.[4]

The *Competencies and Criteria* sets out "the skills, knowledge, and behaviors that all California Community College (CCC) employees *must* demonstrate[.]" Verif. Compl. Ex. B. This document was sent out to all districts and referred to as a "framework that can serve as a minimum standard for evaluating all California Community College employees." Verif. Compl. Ex. C. In fact, Counsel for State Defendants recently conceded in a hearing in the related case of *Johnson v. Watkin*, Case No. 1:23-CV-00848 Case No. (E.D. Ca. 2023), that the standards the District adopts *must* be consistent with the *Competencies and Criteria*. Ortner Decl. Ex. A at 12:3-18.[5]

[4] State Defendants argue that the Implementation Guidelines are not enforceable because they were not enacted pursuant to Board of Governor procedures. State Opp'n at 5–6. But the DEIA Rules were adopted by the Board of Governors and the process set out for the adoption of competencies and criteria in the DEIA Rules does not require further approval by the Board. Cal. Code of Regs. tit. 5, § 53601(a)–(b). The Board of Governors' rules also do not require a formal approval process for "explanatory advisories, guidelines, or statements issued by the Board or the Chancellor to the districts." *See* Cal. Cmty. Colls., *Procedures and Standing Orders of the Board of Governors* (Dec. 2022) ch. 2, § 200.

[5] District Defendants likewise recognized in a September 19, 2023 email to all staff that the *Competencies and Criteria* were binding. Blanken Decl. ¶¶ 4, Ex A.

Implementing the *Glossary* definitions is also mandatory. The implementation memo directs faculty to the *Glossary* to "assist with . . . understanding [the] DEIA efforts." Verified Compl. Ex. C. The *Model Principles* document is likewise listed on the State Chancellor's DEIA website[6] as a "guidance memo" explaining what integrating "DEIA principles" into the classroom should look like and setting out "curricular priorities" districts are encouraged to incorporate. Verified Compl. Ex. D. Each of the Implementation Guidelines therefore "*shall be used*" by the districts in implementing and enforcing the requirements in the DEIA Rules.

Furthermore, even if the Implementation Guidelines are not binding, they still explain how the State expects its DEIA Rules will be implemented and what kinds of curricular changes they are intended to achieve—something neither set of Defendants has denied. In light of the DEIA Rules' vague terminology and the lack of clear standards, no reasonable faculty member would risk ignoring these guidelines when determining how to comply with the DEIA Rules. Even if these guidelines are technically not "binding," they still will have a direct chilling effect on classroom instruction since protected speech in the classroom will "be inhibited almost as easily by the potential or threatened use of power as by the actual exercise of that power." *New York State Club Ass'n, Inc. v. City of New York*, 487 U.S. 1, 11 (1988).[7]

[6] California Community Colleges, Diversity, Equity, Inclusion, and Accessibility (last accessed Sept. 25, 2023), https://www.cccco.edu/About-Us/Vision-for-Success/diversity-equity-inclusion.

[7] State Defendants erroneously claim that Plaintiffs do not seek to enjoin enforcement of the Implementation Guidelines. State Opp'n at 6. But Plaintiffs allege that the Implementation Guidelines are an integral part of the DEIA Rules and that State Center has incorporated and plans to enforce the Implementation Guidelines through the Faculty Contract. Verified Compl. ¶ 58 ("The Chancellor's Office developed and published three guidance documents local districts and colleges must use when implementing the DEIA Rules"); *id.* ¶ 83 ("The Faculty Contract contains DEIA obligations implementing the State Chancellor's DEIA Rules, including the Implementation Guidelines."). An injunction against the DEIA Rules and Faculty Contract will therefore necessarily also prevent any enforcement of the Implementation Guidelines.

B. Plaintiffs' injury is caused by both the State and the District's actions.

Plaintiffs' injuries are "fairly traceable" to both the State Defendants' adoption of the DEIA Rules and to the District Defendants' implementation of the DEIA Rules. The State Defendants argue that they are not responsible for any injury to Plaintiffs from the DEIA Rules because the District Defendants must ultimately implement the DEIA rules. State Opp'n at 9–11. But Article III does not require plaintiffs to be the object of the government's action, only a "causal connection between [plaintiffs'] injury and the conduct complained of" is needed. *Lujan,* 504 U.S. at 560. Enactment of the DEIA Rules by the State Defendants "set[] in motion a series of acts by others" they knew or should have known "would cause others to inflict the constitutional injury." *Merritt v. Mackey*, 827 F.2d 1368, 1371 (9th Cir. 1987). The DEIA Rules have a "determinative or coercive effect upon the action of" the District Defendants, and therefore Plaintiffs have standing to sue the State Defendants. *Skyline Wesleyan Church v. Cal. Dep't of Managed Health Care*, 968 F.3d 738, 749 (9th Cir. 2020).

The State Defendants' claim that the DEIA Rules "are not disciplinary in nature" and merely set out the State's "ideals and principles" and "support . . . professional development" is not credible. State Opp'n at 1, 5. Indeed, they concede that districts are bound to follow "the minimum standards adopted by the board of governors" of the California Community Colleges, State Opp'n at 5, 11, which is exactly what they did when they promulgated the DEIA Rules.

The DEIA Rules are binding and "disciplinary in nature," not just inspirational "professional development" goals that set forth the State's "ideals." The DEIA Rules establish "Standards in the Evaluation and Tenure Review of District Employees" which now form the "minimum qualifications for employment." Verified Compl. Ex. A. They are filled with mandates extending to both the districts and their employees. For instance, a district "*shall* adopt policies for the evaluation of employee performance." Evaluations "*must* include consideration of an

employee's . . . proficiency in . . . DEIA-related competencies." Districts "*shall* . . . place significant emphasis on DEIA competencies." And "[d]istrict employees *must* have or establish proficiency in DEIA-related performance to teach, work, or lead within California community colleges." *Id.*

Yet State Defendants still claim that it is "speculative" whether State Center will enforce the DEIA Rules against Plaintiffs. State Opp'n at 21. But there is nothing "speculative" about it. State Center cannot ignore binding requirements from the State Chancellor's office, especially given the oversight authority of the State Chancellor and Board of Governors. Cal. Educ. Code § 70901 ("[T]he board of governors shall provide general supervision over community college districts" including setting "[m]inimum standards for the employment of academic and administrative staff in community colleges"); Cal. Code Regs. Tit. 5, §§ 51100–02 (authorizing the State Chancellor to review whether districts are complying with the minimum standards and to impose penalties for lack of compliance). District Defendants recognize these DEIA Rules as binding and admit that they adopted the DEIA language in the Faculty Contract *in order to* comply with the DEIA Rules. Mosier Decl. ¶ 3 ("[T]he parties decided at that time to incorporate principles from the proposed versions of the DEIA regulations into the agreement in anticipation of their formal adoption."). This concession is fatal to the State Defendants' standing arguments.

The primary standing case Defendants rely on is easily distinguishable. State Opp'n at 9. In *Barke v. Banks*, a law prohibited public *employers* from discouraging employees from joining employee organizations. 25 F.4th 714, 716 (9th Cir. 2022). The law did not regulate employee speech at all. Nevertheless, some public officials sued because they were afraid their employers would be sanctioned for their speech. *Id.* at 718. The plaintiffs in *Barke* also failed to identify what speech they would engage in that could violate the rule. *Id.* By contrast, Plaintiffs have identified specific ways that their teachings will conflict with the DEIA Rules and therefore have

shown how the DEIA Rules are impacting their teaching right now. Verified Compl. ¶¶ 98–173. Similarly in *Leonard v. Clark*, individual employees lacked standing to challenge a collective bargaining agreement that restricted the union's speech on behalf of union members but did not restrict employee speech directly. 12 F.3d 885, 888–89 (9th Cir. 1993). By contrast, the DEIA Rules order community college districts to implement DEIA requirements for their *employees* who can be sanctioned or even fired if they do not comply. Verified Compl. Ex. A § 53602.

First Interstate Bank v. State of California, 197 Cal. App. 3d 627, 633 (1987), is likewise easily distinguishable. State Opp'n at 11. In that case, a bank could not hold the Board of Governors responsible for a district's failure to make a lease payment because they had not caused the injury. *Id.* Here, by the contrast, the State Defendants enacted the DEIA Rules that are binding on the districts and causing Plaintiffs' injury. It does not matter that the State Defendants are not the ones with the direct authority to fire or punish Plaintiffs. Neither State Defendants nor District Defendants need to be "the sole source of the [injury]" in order to be subject to suit. *Barnum Timber Co. v. U.S. E.P.A.*, 633 F.3d 894, 901 (9th Cir. 2011).

On the other hand, the District Defendants argue that they cannot be enjoined because they are merely complying with state law and did not "cause" the constitutional violations. *See* Dist. Opp'n at 24. But the cases on which they rely are distinguishable because there was no "discretionary delegation of authority" from the state to the municipality. *Quezambra v. United Domestic Workers of Am. AFSCME Loc. 3930*, 445 F. Supp. 3d 695, 706 (C.D. Cal. 2020). Indeed, municipal officials were given "no discretion" at all. *Aliser v. SEIU California*, 419 F.Supp.3d 1161, 1165 (N.D. Cal. 2019). By contrast, the Faculty Contract is State Center's "policy" and it plays "a part in the violation of federal law." *Hafer v. Melo*, 502 U.S. 21, 25 (1991). While State Center was obligated to implement the DEIA Rules, it was given discretion to issue additional requirements through its own policies and to "make . . . choices regarding

implementation." Dist. Opp'n at 12. For instance, the DEIA Rules do not require that professors write a personal statement about their embrace of DEIA principles; rather, that requirement comes directly from State Center. The violation of Plaintiffs' rights can therefore be traced directly to both sets of defendants.

C. A preliminary injunction would redress Plaintiffs' injury.

Plaintiffs' injury would be remedied by a preliminary injunction which would free them to continue to teach without fear of being punished for refusing to endorse the state's preferred viewpoint. Article III is satisfied so long as the preliminary injunction would redress Plaintiffs' injury "to a minimal extent"—as a preliminary injunction plainly would here—and "[n]othing more is needed to establish redressability." *Skyline Wesleyan Church*, 968 F.3d at 749. As discussed above, enforcement of the DEIA Rules is a joint effort with the State Defendants setting expectations and standards and the District Defendants implementing those standards to evaluate Plaintiffs' performance. An injunction would prevent the State Defendants from forcing the District to enforce the DEIA Rules and would likewise prevent the District Defendants from enforcing the DEIA requirements in the Faculty Contract, therefore providing complete relief.

D. Plaintiffs face an imminent risk of harm.

Defendants argue that Plaintiffs do not face a credible risk of injury. State Opp'n at 8; Dist. Opp'n at 15–16. But Plaintiffs face "a realistic danger of sustaining a direct injury as a result of" the DEIA Rules "operation or enforcement." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). "In a pre-enforcement challenge, plaintiffs can show injury in fact by establishing that (1) they intend to violate the law; and (2) have shown a reasonable likelihood that the government will enforce the statute against them." *Project Veritas v. Schmidt*, 72 F.4th 1043, 1053 (9th Cir. 2023). In First Amendment cases, "the inquiry tilts dramatically toward a finding of standing." *Libertarian Party of Los Angeles Cnty. v. Bowen*, 709 F.3d 867, 870 (9th

Cir. 2013), and this Court should "assume a credible threat of prosecution in the absence of compelling contrary evidence." *Speech First, Inc. v. Fenves*, 979 F.3d 319, 335 (5th Cir. 2020).

In their Verified Complaint, Plaintiffs identified many discreet ways that they will run into conflict with the DEIA Rules and Faculty Contract and be forced to endorse "DEIA and anti-racist principles" that they reject. For instance, Plaintiffs point to several topics, books, articles, and assignments that they have assigned for years without incident but have stopped assigning or may stop assigning as a direct consequence of the DEIA Rules and Faculty Contract. Verified Compl. ¶¶ 100–09, 117–20, 127–33, 141–44, 151–56, 162–70. They also will refuse to endorse specific concepts and viewpoints that they must now endorse such as "anti-racism" and "intersectionality." *Id.* Furthermore, contrary to District Defendants' claims, Plaintiffs allege that in their self-evaluations they will express their opposition to concepts such as "anti-racism" and "intersectionality," and will instead advance contrary concepts like "color-blindness." Verified Compl. ¶¶ 113, 123, 137, 148, 158, 172. Indeed, at least one of the Plaintiffs already did so during his last review cycle before the Faculty Contract was in effect. Verified Compl. ¶ 123.

As a result, Plaintiffs face more than a reasonable likelihood that the DEIA Rules and Faculty Contract will be enforced against them. Indeed, the threat of enforcement is not merely a probability, but is assured, because all faculty are subject to regular DEIA evaluations. Plaintiffs Stannard and Blanken will be evaluated as soon as next semester. Verified Compl. ¶¶ 135, 155.

Defendants assert that the concepts, books, and articles that Plaintiffs want to assign are not prohibited by the DEIA Rules. But their assertions made as a convenient "litigation position" do not alleviate the chilling effect that the DEIA Rules are having, especially in light of evidence (in the Implementation Guidelines) that Defendants have "adopted an expansive reading" of the DEIA Rules. *Lopez v. Candaele*, 630 F.3d 775, 788, 791 (9th Cir. 2010). Plaintiffs suffer a constitutional injury if the "intended speech arguably falls within the statute's reach"—as it does

here. *Human Life of Washington Inc. v. Brumsickle*, 624 F.3d 990, 1001 (9th Cir. 2010). Plaintiffs should not be left "at the mercy of noblesse oblige . . . merely because the government promised to use it responsibly." *United States v. Stevens*, 559 U.S. 460, 480 (2010).

District Defendants also claim that Plaintiffs are not going to be harmed because the DEIA Requirements are only one of ten evaluation criteria. But the District Defendants concede that under the DEIA Rules, they must give these requirements "significant" weight. District Opp'n at 16. And in the Faculty Contract, DEIA is given equal weight to core teaching requirements, like "[k]nowledge of subject matter," "[a]dherence to institutionally approved course outline," and "[e]vidence of course objectives being met." Verified Compl. Ex. F at 43. Plaintiffs would be foolish to disregard the course outline because adherence to it is one of only ten evaluation criteria. They cannot afford to ignore the DEIA requirements and hope for the best.

District Defendants further suggest that Plaintiffs do not face an imminent risk of harm because none of them are being formally evaluated *this semester* and cannot predict who will evaluate them in the future. District Opp'n at 26–27. This argument ignores reality. These requirements are in effect *now* and Plaintiffs are expected to immediately begin implementing these requirements in the classroom. Professors at State Center would be foolish to flaunt the DEIA Requirements until the semester when they are up for review, given the dire potential consequences for failure to comply, up to and including termination. *See* Verif. Compl. ¶¶ 90–95. District Defendants do not deny that these consequences are on the table. And these threats loom large no matter who will conduct their evaluation.

District Defendants promise everything will be made right through future regulations and trainings that clarify that the Faculty Contract does not trample on the First Amendment. Dist. Opp'n at 12–13. But Plaintiffs should not be required to rely on vague promises of future clarification when their First Amendment rights are being impinged *right now*. If District

Defendants believe they can cure their constitutional deficiency and implement DEIA requirements that do not interfere with Plaintiffs' free speech rights, then they should be required to prove that by enacting such rules. In the meantime, Plaintiffs are entitled to a preliminary injunction to remedy the imminent and ongoing harms they are facing *right now.*

Similarly, the lack of enforcement history of a brand-new regulation and faculty contract provides no comfort to Plaintiffs who are *now* unsure what they can say or teach in the classroom without jeopardizing their jobs. The First Amendment does not require Plaintiffs to wait and see whether they or their colleagues will be punished for violating unconstitutional rules before bringing a challenge.

III. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.

Plaintiffs are likely to succeed on the merits of their claims. As explained in the moving brief, the DEIA Rules and Faculty Contract require Plaintiffs to teach and preach the State's mandatory DEIA viewpoints. Pl. Opening Br. at 10. Plaintiffs therefore are prohibited from sharing contrary viewpoints and penalized if they do so (Counts I & II). They are also compelled to endorse DEIA viewpoints in the classroom and in their personal essay (Counts III & IV). The DEIA Rules also impose a prior restraint (Counts V & VI). Neither the State nor the District can point to a compelling interest that the DEIA Rules and Faculty Contract further, and they can prevent actual discrimination without interfering with First Amendment freedoms. The DEIA Rules and Faculty Contract are also overbroad (Counts VII & VIII) and vague (Counts IX & X).

A. Defendants cannot punish Plaintiffs for expressing their relevant viewpoints in the classroom.

The DEIA Rules and Faculty Contract are viewpoint-based, requiring Plaintiffs to endorse certain DEIA viewpoints and threatening them if they teach contrary views in the classroom. By requiring that Plaintiffs "acknowledge," "promote," "incorporate," "advocate for," and "advance" DEIA principles such as "anti-racism" and "intersectionality" which must be "weav[ed] . . . into

every course," the DEIA Rules and Faculty Contract impose viewpoint-based speech restrictions and requirements. *See supra* Section II.A.

The District Defendants are candid about this viewpoint discrimination. They concede that under the DEIA Rules and Faculty Contract, the District "must necessarily evaluate faculty's academic and teaching excellence on the basis of viewpoint." Dist. Opp'n at 20.[8] But they claim that this is unavoidable and compatible with the First Amendment. They are mistaken. It is true that a university must be able to set *content-based* curricular standards. *See Demers,* 746 F.3d at 413 ("Ordinarily . . . *content-based judgment* is anathema to the First Amendment. But in the academic world, such a judgment is both necessary and appropriate." (emphasis added)). For instance, it is unremarkable that a university could force a math professor to teach his students math rather than philosophy. But viewpoint-based requirements for what pedagogically relevant viewpoints public university faculty discuss in their classrooms are another matter altogether. Viewpoint discrimination is a "poison to a free society"—and particularly in our public institutions of higher learning. *Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) (Alito, J., concurring). The First Amendment "does not tolerate laws that cast a pall of orthodoxy over the classroom," *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967), or allow colleges "to act as classroom thought police." *Meriwether v. Hartop*, 992 F.3d 492, 507 (6th Cir. 2021). Without a compelling interest, colleges cannot exclude viewpoints that are "germane to the classroom subject matter." *Hardy v. Jefferson Cmty. Coll.,* 260 F.3d 671, 683 (6th Cir. 2001). This is especially true for controversial topics "like race, where the risk of

[8] Counsel for State Defendants similarly acknowledged during a hearing in the related case of *Johnson v. Watkin*, No. 1:23-cv-00848-CDB, that determining compliance with the DEIA Rules would depend on *how* a professor implements DEIA material in the classroom. Ortner Decl. Ex. A at 15:6–10. In light of this concession, State Defendants' argument that Plaintiffs cannot prove that their speech will play "a substantial or motivating factor" in evaluations should be rejected. State Opp'n at 15 (citing *Eng v. Cooley*, 552 F.3d 1062, 1071 (9th Cir. 2009)).

conflict and insult is high." *Rodriguez v. Maricopa Cnty. Cmty. Coll. Dist.*, 605 F.3d 703, 708 (9th Cir. 2010).

Defendants also argue that the DEIA Rules and Faculty Contract will not prohibit professors from sharing their own viewpoints. State Opp'n at 14–15; Dist. Opp'n at 21. But the DEIA Rules require Plaintiffs to actively "promot[e]" concepts like "anti-racism" or "race-conscious[ness]." Plaintiffs are being evaluated for how well they espouse the party line—if they critique race-consciousness or promote color-blindness, they will be accused of not "promoting [] race-conscious[ness]" with sufficient vigor or even of "weaponize[ing] academic freedom" to "inflict curricular trauma" on their students.

But even if professors are not outright *prohibited* from expressing their viewpoints, the DEIA Rules and Faculty Contract still put a heavy thumb on the scale in favor of the State's preferred DEIA viewpoints since professors know that any teaching or advocacy they do in favor of "anti-racism" will count towards their DEIA competency requirement, while contrary teaching or advocacy will not. For instance, Professor Druley's signing of a "Pro-Human Pledge" will not be credited as participation in "community activities that promote systemic and cultural change," Verified Compl. ¶ 105–06, while similar activities of professors in support of race-conscious and anti-racist policies will be credited. Professors will therefore feel pressured to express the State's preferred DEIA viewpoints and to curtail speech to the contrary if they want to advance professionally or retain their jobs.

B. Defendants may not compel professors to endorse state-mandated DEIA views.

Defendants are entitled to express their commitment to DEIA principles in their own statements, but they may not compel college faculty to endorse their preferred viewpoints and be the state's mouthpiece in the classroom. That is exactly what the DEIA Rules require.

As discussed above, Plaintiffs are expected and required to "acknowledge," "promote," "incorporate," "advocate for," and "advance" DEIA principles which must be "weav[ed] . . . into every course." They must do so even though they fundamentally disagree with the State's preferred DEIA positions and believe that they are pedagogically unsound. But under the First Amendment, Plaintiffs cannot be forced to be "an instrument for fostering public adherence to an ideological point of view [they] find[] unacceptable." *Wooley v. Maynard*, 430 U.S. 705, 715 (1977).

The District Defendants claim that these provisions do "not require Plaintiffs to adopt any particular approach to these DEIA principles." Dist. Opp'n at 21. But the requirements to "promote" or "advocate for" or "advance" plainly require that Plaintiffs advance a favorable position towards topics like "anti-racism" or "intersectionality." After all, a lecture explaining the flaws with "anti-racism" can hardly be said to "promote" or "advocate for" or "advance" anti-racism. The DEIA Rules and Faculty Contract therefore improperly force Plaintiffs "to take the government's side on a particular issue." *All. For Open Soc'y Int'l, Inc. v. USAID*, 651 F.3d 218, 235 (2d Cir. 2011). And "[f]orcing free and independent individuals to endorse ideas they find objectionable is always demeaning" and is therefore subject to strict constitutional scrutiny. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council, 31*, 138 S. Ct. 2448, 2464 (2018).

District Defendants also argue there is no harm because Plaintiffs are not prohibited from also sharing their own viewpoints. Dist. Opp'n at 21. This is not true. *See supra* Section III.A. But even if Plaintiffs can *also* offer their own critiques, they are still being forced to use precious class time to *advocate for* viewpoints that they find deeply problematic. This also deprives them of their constitutionally protected "choice of what not to say," *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of Cal.*, 475 U.S. 1, 16 (1986), or to "refrain from speaking at all," *Janus*, 138 S. Ct. at 2463. This "necessarily alters the content of the[ir] speech," *Evergreen Ass'n, Inc. v. City of New*

York, 740 F.3d 233, 244 (2d Cir.2014), and cannot be justified short of "immediate and urgent grounds," *Janus*, 138 S. Ct. at 2464.

In *Pacific Gas and Electric*, the Supreme Court found that a utility company was not required to give space on its billing envelope to views that it disagreed with even though it could respond to those views, 475 U.S. 1, 13-15 (1986), and in *NIFLA*, pregnancy clinics could not be required to promote abortion even though they could also deliver a pro-life message, *Nat'l Inst. of Family & Life Advocs. v. Becerra* 138 S. Ct. 2361, 2371-76 (2018). Plaintiffs likewise cannot be required to "to take the government's side on" DEIA even if they are then free to share their own views. This is particularly true at our public colleges, where the "danger . . . to speech from the chilling of individual thought and expression . . . is especially real." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 835 (1995).

Plaintiffs will also be required to endorse Defendants' DEIA viewpoints in a personal statement each time they are evaluated. District Defendants concede that faculty will be required to write a personal statement that "demonstrate[s] an understanding of . . . [DEIA] competencies and anti-racist principles," but claims that this "is a standard report of actions, efforts, and successes pursuant to Plaintiffs' employment – no different from a report on research activity." Dist. Opp'n at 21. But there is a crucial difference. A report on research activity relies on viewpoint-neutral and pedagogically objective criteria to assess the quality of a professor's output regardless of viewpoint. A professor who publishes an article in a prestigious journal is given credit whether that article expresses a viewpoint in favor or against affirmative action or any other topic. By contrast, the DEIA statement will require professors to either endorse the viewpoints that the State and District have imposed or risk an adverse evaluation. This violates the "fixed star" of "our constitutional constellation" that the government cannot proscribe what is

"orthodox" or "force citizens to confess by word or act their faith therein. *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943).

C. The DEIA Rules are not justified by compelling interests.

Because the DEIA Rules and Faculty Contract employ viewpoint-based discrimination and compel endorsement of the State's prescribed viewpoints, they are subject to strict scrutiny and Defendants must prove that they are narrowly tailored to further a compelling government interest. *NIFLA*, 138 S. Ct. at 2371. Defendants point to only two interests in defense of the DEIA Rules: Ensuring that students with diverse backgrounds are treated with "sensitivity," Dist. Opp'n at 13, and preventing discrimination, State Opp'n at 15–16; Dist. Opp'n at 28. Neither interest can justify sweeping restrictions on faculty speech.[9]

Defendants cannot shield students from controversial speech whether styled as promoting "sensitivity," avoiding "curricular trauma," or otherwise. As the Ninth Circuit has explained, "[t]he desire to maintain a sedate academic environment, 'to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint,' is not an interest sufficiently compelling . . . to justify limitations on a teacher's freedom to express himself." *Adamian v. Jacobsen*, 523 F.2d 929, 934 (9th Cir. 1975). That is true even if the expression is "vigorous, argumentative, unmeasured, and even distinctly unpleasant," *id.* at 934, let alone the kind of measured academic debate and discussion that Plaintiffs encourage in the classroom. Verified Compl. ¶¶ 100–09, 117–20, 127–33, 141–44, 151–56, 162–70.

Defendants also argue that the DEIA Rules and Faculty Contract are anti-discrimination policies that are necessary to prevent discrimination against minority students. State Opp'n at 15–

[9] State Defendants allude in passing in the introduction to their brief that the DEIA Rules are intended to "reduce the administrative burden of incidents of campus social conflict" but never elaborate on this interest or explain how the DEIA Rules further it. State Opp'n at 1. A cryptic evidence-free allusion cannot satisfy strict scrutiny.

16; Dist. Opp'n at 28. But interfering with the curriculum and requiring endorsement of state-mandated viewpoints does not prevent discrimination, which is already prevented by existing State and federal anti-discrimination protections. Plaintiffs do not object to policies that require treating students equally. They object to being forced to teach a particular viewpoint.

In defending the DEIA Rules, State Defendants rely heavily on *Alpha Delta Chi-Delta Chapter v. Reed*, 648 F.3d 790 (9th Cir. 2011). State Opp'n at 15–16. But the Ninth Circuit recently declared that *Alpha Delta Chi-Delta*'s "analysis pertaining to the Free Speech Clause has similarly been abrogated by more recent Supreme Court authority" and "is no longer good law." *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, No. 22-15827, 2023 WL 5946036, at *15 n. 8 (9th Cir. Sept. 13, 2023). In any event, *Alpha Delta Chi-Delta* is easily distinguishable. It involved an anti-discrimination policy that barred student clubs from excluding student members and did not directly regulate the student club's message. *Alpha Delta Chi-Delta*, 648 F.3d at 803. The policy contained some aspirational language about promoting diversity, but this language was not enforceable and could not be used to deny recognition to a student club. *Id.* at 799. By contrast, the DEIA Rules specifically regulate *how* and *what* a professor must teach in the classroom with severe consequences up to and including termination for failing to comply.

Defendants' DEIA Rules and Faculty Contract also go far beyond remedying "specific, identified instances of past discrimination." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2162 (2023). Instead, Defendants are pursuing "equity," i.e., equality of outcome, and an "antiracist environment," i.e., policies that affirmatively take race into account. Dist. Opp'n at 28; State Opp'n at 16. These are the types of efforts at racial balancing that the Supreme Court has sharply rejected as "discrimination for its own sake." *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 307 (1978).

Even if these interests were compelling, interfering with classroom teaching and commandeering professors to endorse and express the State's message would not be the least restrictive means for achieving any anti-discrimination goal. "[A] public university has many constitutionally permissible means to protect female and minority students" and therefore its actions "'cannot consist of selective limitations upon speech.'" *See Iota Xi Sigma Chi v. George Mason Univ.*, 993 F.2d 386 (4th Cir. 1993) (university could not punish a student for dressing up in drag and blackface) (quoting *R.A.V. v. City of St. Paul*, 505 U.S. 377, 392 (1992)). Under the previous faculty contract professors were already expected to be "[r]esponsive to the educational needs of students by exhibiting awareness of and sensitivity to . . . [d]iversity of cultural backgrounds, gender, age, and lifestyles."[10] Because discriminatory *conduct* was already prohibited, District Defendants cannot claim that the new contract is necessary for preventing discrimination. The DEIA Rules and Faculty Contract cannot survive constitutional scrutiny.

D. The DEIA Rules impose a prior restraint.

Because the DEIA Rules and Faculty Contract do not concern "an isolated disciplinary action" and instead impose "a wholesale deterrent to a broad category of expression by a massive number of potential speakers," they are a prior restraint on speech under *United States v. National Treasury Employees Union* (*NTEU*), 513 U.S. 454, 467 (1995); *Progressive Democrats for Soc. Justice. v. Bonta*, 73 F.4th 1118, 1123 (9th Cir. 2023); *Hernandez v. City of Phoenix*, 43 F.4th 966, 980 (9th Cir. 2022).[11] Such prior restraints are evaluated under a modified form of the *Pickering* balancing test, as District Defendants state. Dist. Opp'n at 22. But what they fail to

[10] Blanken Declaration ¶¶ 11–12 Ex B.

[11] Most of the cases that District Defendants cite to are not public employee cases and therefore not relevant for determining whether *NTEU's* heightened standard applies. *See* Dist. Opp'n at 21-22 (citing *Healy v. James*, 408 U.S. 169, 172 (1972); *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1023 (9th Cir. 2009*); Taylor v. Roswell Indep. Sch. Dist.*, 713 F.3d 25, 34 (10th Cir. 2013); *United States v. Quattrone*, 402 F.3d 304 (2d Cir. 2005)). And the question of whether *NTEU* applies was not discussed in *Gibson v. Off. of Atty. Gen., State of California*, 561 F.3d 920, 926 (9th Cir. 2009).

acknowledge is that under this test they bear the "heavy burden" of proving that 1) professorial speech contrary to the State's preferred DEIA viewpoints has a "necessary impact on the actual operations" of State Center; 2) these "recited harms are real, not merely conjectural"; and 3) "the regulation will in fact alleviate these harms in a direct and material way." *NTEU*, 513 U.S. at 468, 475. District Defendants do not even attempt to satisfy any of these elements, instead merely asserting without evidence or elaboration that "the District has a legitimate interest in advancing its educational mission." Dist. Opp'n. at 22. That isn't good enough to satisfy *NTEU*'s "heavy burden" or even *Pickering* balancing.

E. The DEIA Rules are overbroad and vague.

As discussed in Plaintiffs' opening brief, the DEIA Rules and Faculty Contract are overbroad and vague. Pl. Opening Br. at 19–23. The DEIA Rules and Faculty Contract sweep a wide range of constitutionally protected speech with little or no "legitimate sweep." *Stevens*, 559 U.S. at 473. As a result, Plaintiffs cannot continue to assign or discuss constitutionally protected works and topics, from reading Martin Luther King, Jr.'s *Letter from Birmingham Jail* to discussing why color-blind approaches best combat systemic racism. Verified Compl. ¶¶ 100–09, 117–20, 127–33, 141–44, 164–65. In response, Defendants simply assert again that the DEI Rules "do not infringe on Plaintiffs' ability to advocate, teach, or assign classroom materials." Dist. Opp'n at 22. But this argument is untenable. The DEIA Rules impose viewpoint-based burdens and mandates upon both what professors *must* and *must not* teach. *See supra* Section II.A.

The DEIA Rules are also vague, mandating that professors comply with indecipherable or unclear requirements. Defendants argue that the DEIA Rules are not vague because "[t]he regulations provide a long list of relevant definitions." Dist. Opp'n at 23. But this "long list of relevant definitions" is opaque and provides little clarity to professors as to exactly what they are expected to teach or avoid teaching. Under the DEIA Rules, Plaintiffs are told that they must

"employ teaching, learning, and professional practices that reflect DEIA and anti-racist principles." Cal. Code Regs. Tit. 5 § 53605(a). But these terms either lack definitions or fail to provide any helpful guidance. For instance, one of the key terms —"equity"—is not defined at all, while "anti-racism" and "antiracist" are defined unhelpfully as "policies and actions that lead to racial equity." *Id.*, § 52510(d). How can a professor know which practices lead to "racial equity," and what happens when a professor and an administrator at State Center disagree? The Faculty Contract similarly mentions that faculty are required to "reflect knowledge of the intersectionality of social identities," but neither the faculty contract nor the DEIA Rules defines "intersectionality." Verified Compl. Ex. F. The DEIA Rules and Faculty Contract therefore do not just lack "perfect clarity and precise guidance," District Opp'n at 23, they deprive professors of "a reasonable opportunity to understand what conduct [the provisions] prohibit[]." *Hill v. Colorado*, 530 U.S. 703, 732 (2000). As a result of the pervasive use of vague terms, there is also no narrowing construction that would allow the DEIA Rules and Faculty Contract to pass Constitutional muster despite State Defendants' suggestion to the contrary. State Opp'n at 17-18.

The *Model Principles* and *Glossary* are more concrete—albeit filled with even more DEIA jargon that professors will find impenetrable, such as "an individualist perspective" or a "collectivism perspective." Verified Compl. Ex. D. But Defendants cannot have it both ways. They cannot claim that these documents are irrelevant for showing the intentions of the DEIA Rules and Faculty Contract and then rely on them to define the vague terms that the Rules and Contract utilize. And in any event these documents introduce even greater subjectivity with concepts such as "merit" or "individualism" providing administrators with even more leeway to penalize professors who speak out contrary to the administrator's preferred DEIA position.

The vagueness of the DEIA Rules and Faculty Contract is also shown by the District Defendants' recent actions. On September 19, 2023, Defendants sent an email to State Center

faculty admitting that administrators "have not yet been able to meet to develop training [on the competencies and criteria for faculty evaluations], but will be doing so in the next few weeks." Faculty currently being evaluated are directed to "in good faith, review the language in the contract and do their best to speak to how they have demonstrated or shown progress toward practices that embrace the DEIA principles."[12] But when First Amendment rights are on the line, "do your best" is not a constitutionally acceptable standard.

IV. THE FACULTY CONTRACT IS NOT A VALID WAIVER OF PLAINTIFFS' CONSTITUTIONAL RIGHTS.

The DEIA provisions in the Faculty Contract do not constitute a valid waiver of Plaintiffs' First and Fourteenth Amendment rights. Union representatives may not disclaim the First Amendment rights of all full-time faculty. But even if a collective bargaining agreement could waive Plaintiffs' rights, the Faculty Contract did not do so because the DEIA provisions were not voluntarily bargained for and lacked a clear and unmistakable statement to notify members that they were waiving their constitutional rights.

A. The union may not waive Plaintiffs' substantive constitutional rights.

"There are some rights and freedoms so fundamental to liberty that they cannot be bargained away in a contract for public employment." *Borough of Duryea, Pa., v. Guarnieri*, 564 U.S. 379, 386 (2011); *cf. Metro. Edison v. NLRB*, 460 U.S. 693, 705–06 (1983) (holding that "a union may bargain aways its members' economic rights, but it may not surrender rights that impair the employees' choice of their bargaining representative"). The First Amendment rights of university and college faculty is one such fundamental right. *See Meriwether v. Hartop*, 992 F.3d at 505 ("[A] professor's rights to academic freedom and freedom of expression are paramount in the academic setting." (internal quotation marks omitted)). Those rights are core to our

[12] Blanken Decl. ¶¶ 2–10, Ex A.

conception of the university as "peculiarly the 'marketplace of ideas." *Healy v. James*, 408 U.S. at 180 (1972); *see also Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality op.) ("The essentiality of freedom in the community of American universities is almost self-evident").

To allow public unions to waive the First Amendment rights of faculty members would permit the state to effect indirectly through a collective bargaining agreement what the Constitution prohibits it from doing directly. Collective bargaining agreements entered by public agencies have "all of the attributes of legislation for the subjects with which it deals" and therefore are "fully subject to the constraints that the Constitution imposes on coercive governmental regulation." *Abood v. Detroit Bd. of Educ*, 431 U.S. 209, 252–53 (1977) (Powell, J., concurring in the judgment). Justice Powell's reasoning was later adopted by the Supreme Court in *Janus* when it overturned *Abood*. 138 S. Ct. at 2483–84. Plaintiffs' First Amendment rights are too important to be traded away in exchange for other benefits at the negotiating table.

B. The contract provisions were not a voluntary and knowing waiver of constitutional rights.

Even if the union is permitted to waive faculty members' First Amendment rights, the Faculty Contract fails to do so here. "[I]n the civil no less than the criminal area, 'courts indulge every reasonable presumption against waiver.'" *Fuentes v. Shevin*, 407 U.S. at 67, 95. n.31 (1972) (quoting *Aetna Ins. Co. v. Kennedy*, 301 U.S. 389, 393 (1937)). Thus, it must be "established by clear and convincing evidence that the waiver is voluntary, knowing, and intelligent." *Gete v. I.N.S.*, 121 F.3d 1285, 1293 (9th Cir. 1997) (citing *Davies v. Grossmont Union High Sch. Dist.*, 930 F.2d 1390, 1394 (9th Cir. 1991)).

Here, the Faculty Contract provisions implementing the DEIA requirements were neither voluntary nor knowing. The contract provisions were not the result of a voluntary bargained-for exchange between the District and the union because there was no "bargaining equality" where the parties "negotiated the terms of the contract." *Erie Telecomms., Inc. v. City of Erie*, 853 F.2d

1084, 1096 (3d Cir. 1988) (citing *D.H. Overmyer v. Frick Co.*, 405 U.S. 174 (1972) and *Fuentes,* 407 U.S. 67). The DEIA provisions were included in the Faculty Contract to comply with the State's DEIA Rules—as the District itself acknowledged. Mosier Decl. ¶ 3 ("[T]he parties decided at that time to incorporate principles from the proposed versions of the DEIA regulations into the agreement in anticipation of their formal adoption."). Thus, the inclusion and core substantive content of the provisions was "a necessary condition" and not a voluntary exchange. *Fuentes*, 407 U.S. at 94. In fact, the union objected to the proposed DEIA Rules in an April 2022 public comment precisely on the ground that the draft regulation usurped its right to collectively bargain a key term of employment—the substance of performance evaluations.[13] A substantive contract provision on a key term of employment which was added without the consultation or acquiescence of one party, and to which that party objects, cannot be considered the result of a voluntary bargain and thus does not constitute a valid waiver of members' constitutional rights.

C. The contract provisions were not a "clear and unmistakable" waiver of constitutional rights.

The Faculty Contract also failed to provide a "clear and unmistakable" waiver of members' First Amendment rights. A union's waiver of its members' constitutional or statutory rights in a collective bargaining agreement must be "clear and unmistakable." *See Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 80 (1998). The federal courts have interpreted "clear and unmistakable" to mean an express statement that the constitutional or statutory rights and protections at issue are waived and replaced with the procedures and protections agreed upon

[13] Proposed Evaluation and Tenure Review Regulatory Action - Chancellor's Office Responses to Public Comments, https://go.boarddocs.com/ca/cccchan/Board.nsf/files/CERSPP73AB25/%24file/Chancellor%27s-Office-Response-to-Public-Comments-Amended-5.22.2022-a11y.pdf.

in the terms of the contract. *See Nelson v. Cyprus Bagdad Copper Corp.*, 119 F.3d 756, 762 (9th Cir. 1997) ("[T]he employee must explicitly agree to waive the specific right in question.").

This requirement has been enforced strictly. In *Wright*, the Supreme Court held that a collective bargaining agreement did not contain a "clear and unmistakable" waiver of members' statutory right to file a lawsuit where the arbitration clause merely provided for arbitration of "[m]atters under dispute," and the remainder of the contract did not include any explicit incorporation of statutory antidiscrimination requirements. 525 U.S. at 80–81. The Court held that "matters under dispute" did not clearly incorporate statutory antidiscrimination rights because the phrase could also be understood to refer to matters in dispute under the contract. *Id*.

Similarly, in *Ciambriello v. County of Nassau*, the Second Circuit held that a collective bargaining agreement did not waive members' procedural due process right to a pre-demotion hearing where it contained no express statement that members were waiving their constitutional rights in favor of the grievance procedures detailed in the contract. 292 F.3d 307, 321–22 (2d Cir. 2002). While a clause did provide that the disciplinary procedures in the contract were in lieu of "any and all other statutory or regulatory disciplinary procedures," it included no mention of rights derived from the Constitution. *Id.* at 322.

Like the contracts in *Wright* and *Ciambriello*, the Faculty Contract does not include any provision or language alerting faculty members to the waiver of their First and Fourteenth Amendment rights. Rather, the Contract merely states that faculty will be evaluated on the basis of their demonstrated DEIA-related competencies. Verified Compl. Ex. F at 35, 37. Given the strong "presumption against waiver," that is not enough. *Fuentes*, 407 U.S. at 94. n.31.

V. THE OTHER PRELIMINARY INJUNCTION FACTORS ARE SATISFIED.

Plaintiffs satisfy the other preliminary injunction factors. They seek a prohibitory rather than a mandatory injunction and so the relief they seek is not disfavored. They will suffer

irreparable harm as a result of the DEIA Rules and Faculty Contract. And the public interest favors the vindication of Plaintiffs' First Amendment rights.

A. Plaintiffs seek a prohibitory injunction, not a mandatory injunction.

State Defendants claim that Plaintiffs seek "mandatory preliminary relief" that would change the status quo and "is subject to heightened scrutiny." State Opp'n at 7 (quoting *Dahl v. HEM Pharms. Corp*., 7 F.3d 1399, 1403 (9th Cir. 1993)). This is not the case. Plaintiffs seek a prohibitory injunction which "freezes the positions of the parties until the court can hear the case on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879 (9th Cir. 2009).

In *Fellowship of Christian Athletes*, an *en banc* Ninth Circuit recently held that a district court erred when characterizing the injunction that a religious student group sought against an anti-discrimination policy as a mandatory inunction. 2023 WL 5946036, at *14. The Court noted that the adoption of the anti-discrimination policy had changed the status quo and the students sought to restore the "longstanding relationship between the parties." *Id.*; *see also Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1061 (9th Cir. 2014).

The DEIA Rules and the DEIA requirements of the State Center Faculty Contract are likewise brand-new requirements that disrupt the status quo and the "longstanding relationship between the parties." Plaintiffs have always been free to share their own views on DEIA-related topics, to assign controversial readings touching on topics like systemic racism and injustice, and to treat students equally based on their merit regardless of skin color. Verified Compl. ¶¶ 100–09, 117–20, 127–33, 141–44, 164–65. That is the status quo the DEIA Rules and Faculty Contract disrupt, and that Plaintiffs are seeking to restore.

B. Plaintiffs will suffer irreparable harm.

As discussed above, Plaintiffs are currently being deprived of their First Amendment rights because of the DEIA Rules and Faculty Contract. *See supra* Section II.A, Section III. "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Defendants largely rehash arguments that have already been addressed, such as claiming that the DEIA Rules and Faculty Contract do not actually infringe on Plaintiffs' First Amendment freedoms. Plaintiffs have already explained why this is false. *See supra* Section II.A, Section III.

The District Defendants also argue that Plaintiffs' "delay" in filing suit and seeking a preliminary injunction undermines their claims of irreparable harm. Dist. Opp'n at 27. This argument is baseless. The DEIA Rules took effect in April 2023 and the deadline for district compliance is not until October 2023. Four months to prepare to file suit is hardly the type of long delay that could weigh against a claim of irreparable harm, especially given that some districts have not incorporated the DEIA Rules into their faculty contracts or promulgated policies to implement the Rules yet. *See Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 423 (9th Cir. 1991) (finding a plaintiff acted with "reasonable diligence" despite a 10-month delay between the enactment of the challenged rule and filing for an injunction). In addition, District Defendants paradoxically argue that this case is not ripe because they have not yet finalized the details of the implementation of the Faculty Contract. Dist. Opp'n at 17. They cannot have it both ways. Plaintiffs acted with reasonable diligence and are entitled to a preliminary injunction.

C. The public interest favors an injunction.

The public interest and balance of equities also favor an injunction. There is always a "significant public interest in upholding First Amendment principles." *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 482 (9th Cir. 2022) (citing *Doe v. Harris*, 772

F.3d 563, 583 (9th Cir. 2014)). This is particularly true on college campuses because diminishing First Amendment freedoms on college campuses would "imperil the future of our Nation." *Sweezy*, 354 U.S. at 250.

Defendants claim that their interest in "ensuring equal access" for students outweighs Plaintiffs' First Amendment rights. But as already addressed above, the link between the DEIA Rules and equal access is tenuous at best. *See supra* Section III.C. On the other hand, an injunction would ensure that college classrooms in California remain places where students "remain free to inquire, to study and to evaluate, to gain new maturity and understanding," *Sweezy*, 354 U.S. at 250—a vital public interest that Defendants continually ignore.

District Defendants also claim the preliminary injunction would disrupt "the workings of the District" and create "dilemmas and impracticalities." Dist. Opp'n at 28–29. This is baseless. An injunction would prevent enforcement of the DEIA portions of the Faculty Contract, not disrupt faculty evaluations generally or prevent enforcement of anti-discrimination provisions. Temporarily enjoining regulations that the District itself does not yet know how to implement will not disrupt the "workings of the District" or create "dilemmas and impracticalities."

CONCLUSION

For the foregoing reasons, this Court should grant Plaintiffs' request for a preliminary injunction.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Daniel M. Ortner, hereby certify that on September 25, 2023, I submitted the foregoing to the Clerk of the Court via the District Court's CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to counsel for all Defendants.

/s/ Daniel M. Ortner
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

LOREN PALSGAARD, ET AL., *Plaintiffs*, v. SONYA CHRISTIAN, ET AL., *Defendants.*	Civil Action No.: 1:23-cv-01228-ADA-CDB **DECLARATION OF DANIEL ORTNER IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** Date: October 2, 2023 Time: 1:30 pm PDT Place: Courtroom 1, 8th Floor Judge: The Honorable Ana de Alba

Pursuant to 28 U.S.C. § 1746(2), I, Daniel Ortner, declare the following:

1. I am lead counsel for Plaintiffs in the above-captioned case and a resident of the State of California. I am over eighteen (18) years of age and fully competent to make this declaration. I knowingly and voluntarily make this declaration in support of Plaintiffs' Motion for Preliminary Injunction. If called as a witness, I believe I could and would testify competently under oath to the following facts, which are based on my personal knowledge.

2. *Johnson v. Watkin,* Case No. 1:23-cv-00848-ADA-CDB, is a related case that involves a challenge to the California Community Colleges' DEIA Rules brought by Daymon Johnson, a professor in the Kern Community College District.

3. On September 7, 2023, Magistrate Judge Christopher D. Baker held a hearing on Mr. Johnson's motion for preliminary injunction.

4. In that case, Defendant Sonya Christensen is represented by Mr. Jay Russell who is also lead attorney for the State Defendants in this case.

5. In that case, the Kern Community College District Defendants are represented by Mr. David Urban who is also lead attorney for the District Defendants in this case.

6. Counsel for Plaintiffs ordered a transcript from the September 7 hearing on Plaintiffs' Motion for Preliminary Injunction in the Johnson case.

7. A true and accurate copy of the hearing transcript that I ordered from the clerk of the court is attached as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 25th day of September 2023.

/s/Daniel Ortner
Daniel Ortner

CERTIFICATE OF SERVICE

I, Daniel M. Ortner, hereby certify that on September 25, 2023, I submitted the foregoing to the Clerk of the Court via the District Court's CM/ECF system, and that this document will be served via CM/ECF on all parties.

/s/ Daniel M. Ortner
DANIEL M. ORTNER

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA (BAKERSFIELD)

DAYMON JOHNSON, Plaintiff, vs. STEVE WATKIN, IN HIS OFFICIAL CAPACITY AS INTERIM PRESIDENT BAKERSFIELD COLLEGE, *et al.*, Defendants.	)	Case No. 1:23-CV-00848-ADA-CDB Thursday, September 7, 2023 10:33 A.M.

TRANSCRIPT OF HEARING ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

BEFORE THE HONORABLE CHRISTOPHER D. BAKER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES ON NEXT PAGE.

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Thursday - September 7, 2023 **10:33 a.m.**

P R O C E E D I N G S

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THE COURT: Okay. Calling the case of Damon Johnson versus Steve Watkin and Others. This is Action 1:23-CV-848. We're convening for a hearing on plaintiff's motion for a preliminary injunction.

Before I ask for the parties' appearances, I want to issue an admonition. I'm admonishing counsel, parties, and the public that the making and transmitting of any recording of any part of this proceeding is strictly prohibited, and I'm citing Local Rule 173 and my order that I'm issuing now.

No person shall make any recording with respect to these proceedings. The consequences for violating this order depending on whether you are an attorney or a non-attorney include sanctions include financial or referral to a disciplinary authority or contempt proceedings.

So with that, I'll ask for party appearances, please, starting with counsel for plaintiff.

MR. GURA: Good morning, Your Honor.

Alan Gura (indiscernible) who is joining us to observe. And I'm joined also by Endel Kolde and Courtney Corbello.

THE COURT: Good morning to you, Mr. Gura.

MR. KOLDE: Good morning, Your Honor.

THE COURT: Good morning to all of you. Thank you. And thank you, Mr. Gura, for those introductions.

Let's start with the easy one which is counsel for defendant Sonya Christian.

MR. RUSSELL: Good morning, Your Honor.

Jay Russell from the California Attorney General's Office appearing for Sonya Christian.

THE COURT: Good morning to you, Mr. Russell.

And now I'll name the other -- oh, I beg your pardon. Go ahead, sir.

MS. REILLEY: Good morning, Your Honor.

Jane Reilley from the Attorney General's Office on behalf of Defendant Christian.

THE COURT: Good morning, Ms. Reilly.

MR. URBAN: Good morning, Your Honor.

David Urban for the Kern Community College District defendants.

THE COURT: Okay. Thank you for that, Mr. Urban.

And I was going to refer to the College and College District Defendants, this would be Richard McCrow, Thomas Burke, Romeo Agbalog, John S. Corkins, Kay S. Meek, Kyle Carter, Christina Scrivner, Nan Gomez Heitzeberg, Yovani Jimenez. Those were all the clients that you uniquely represent, Mr. Urban?

MR. URBAN: Yes, Your Honor.

THE COURT: Very good. Well, good morning to all of you.

In connection with the plaintiff's motion, I've reviewed obviously all the filings and the pleadings on the docket and specifically the parties' filings in connection with plaintiff's motion at Docket 26. That's the opposition briefs by both sets of defendants at 43 and 44 and the plaintiff's replies at 48 and 49.

Is there anything else from plaintiff, Mr. Gura, that I should have received and reviewed in connection with the motion?

MR. GURA: No, Your Honor. I believe you have it all.

THE COURT: Okay. Mr. Russell, anything else?

MR. RUSSELL: No, Your Honor.

THE COURT: And Mr. Urban, anything else?

MR. URBAN: No, Your Honor.

THE COURT: Okay.

I want to start with the statutory scheme. And I feel fairly confident in this due largely to the parties' very well-done briefing, but I think it's important that you hear me articulate this framework and you interject when you think I've got it wrong or if you need to elaborate on something. I think I need to start with that as the foundation before we go into the standing and the merits issues.

Okay. So I'm not sure. Mr. Gura, I'm not ignoring you just because you're virtual and everyone else is in person, but most of these I'm going to lead with defense counsel and that's not to the exclusion of you just poking me and if you have something to add or interject, please do so. Okay?

MR. GURA: Sure.

THE COURT: All right. Okay. So do I have it right that California Education Code 87732 is the principal statute that governs the authority to dismiss a professor for cause?

MR. RUSSELL: I believe that's correct, Your Honor.

MR. URBAN: Yes, Your Honor.

THE COURT: It's not the exclusive, but I think that's really kind of the foundational statute.

MR. RUSSELL: It is.

THE COURT: Okay. And I'm going to specifically direct your attention to subsection (f) which provides persistent violation of or refusal to obey (1) school laws of the state, (2) reasonable regulations prescribed for the government of the community colleges by the Board of Governors, or (3) the governing board of the community college district employing him or her.

So as I read that, there are three basic reasons why either the Board of Governors or a district would have authority to dismiss a professor. It's you violate the

Education Code, you violate the Chancellor's regulations that she implements by her statutory authority, or you violate the district board's reasonable regulations that they likewise implement by virtue of this statutory scheme.

Do I have that right so far?

MR. URBAN: Yes, Your Honor.

THE COURT: Okay.

MR. GURA: Your Honor, if I may?

THE COURT: Go ahead.

MR. GURA: I would add that in the record the defendants have invoked the other subdivisions of Section 87732 to charge an attorney faculty for the kind of speech that my client would like to express. I think we should probably also address whether or not his speech would qualify as immoral or unprofessional conduct, unsatisfactory performance, and (indiscernible) and the like.

THE COURT: I appreciate that caveat. I understand all of those are at issue. But for my purposes of ensuring that I understand the framework, I'm sticking with (f), got an answer on that, and that satisfies me with respect to all the subprovisions thereafter.

Okay. Mr. Urban, this is probably for you. The district board has authority to effect termination pursuant to 87734. Does that sound right?

MR. URBAN: It does.

THE COURT: Okay. And I believe that the district here has implemented a local policy that in large measure mirrors or copies all of the subprovisions of 87732 and including persistent violations of district regulations.

MR. URBAN: I'm not sure --

THE COURT: And that's Board Policy 7360? Does that sound right?

MR. URBAN: I'd have to check that, Your Honor.

THE COURT: Okay.

Mr. Russell, does the Chancellor have independent authority to discipline or dismiss a professor for cause?

MR. RUSSELL: I don't believe so, Your Honor. It's not included within Section 87732 or in the regulations, so no.

THE COURT: I take that, that's a strong theme throughout your papers is that the authorizing statutes are really the Chancellor vis-a-vis the districts and not the Chancellor direct to professors.

But I want to make sure that I have that that there's no separate bases for which -- so, for instance, you read the news -- the Chancellor reads the newspaper and sees an article that Professor Johnson is doing something that she considers inconsistent with DEIA tenets. Does she have a statutory basis or does she have a policy basis for picking up the phone and calling the Kern Community College District and

saying, hey, you need to investigate Professor Johnson?

MR. RUSSELL: Well, I don't know about the phone call. But in terms of statutory basis for herself taking action to terminate an employee, I don't believe that that exists.

THE COURT: Okay. Mr. Gura, anything contrary to that? Do you think that the Chancellor has separate authority to directly discipline or terminate a district employee, professor specifically, or otherwise -- I suppose she wouldn't need a statutory basis to just confer with district administration. But is there any separate authority for the Chancellor to just directly discipline a professor?

MR. GURA: No, Your Honor. The Chancellor is not directly capable of ordering his termination.

THE COURT: Okay. Back to you, Mr. Russell. So the Chancellor is directed and authorized by statute to set minimum standards for employment of academic and admin staff at the colleges, and that's 70901 of the Education Code?

MR. RUSSELL: Correct.

THE COURT: Okay. And by that same statute, the Chancellor is authorized to adopt rules and regulations necessary and proper to carry out that function?

MR. RUSSELL: Correct.

THE COURT: And do I have it right that the rules

and regulations that he or she implements pursuant to that authority are at Division 6 of Title 5 of the Code of Regulations?

MR. RUSSELL: I believe that's correct, Your Honor.

THE COURT: Okay. So the parties are well familiar with and what's front and center to some extent is those regulations at 53601, '02, and '05. So 53601 provides that the Chancellor designated DEIA competencies and criteria shall be used by the districts as a reference in their development of minimum standards for performance evaluation and tenure reviews.

If a district, let's say the Kern Community College District here does something inconsistent with 53601, that is, does not use the Chancellor's DEIA metrics as a reference for their development of their own minimum standards, what can the Chancellor do about it?

MR. RUSSELL: I'm not -- to be perfectly honest, Your Honor, I'm not quite sure. I think there would be a reference to the board and there might be board action undertaken.

You know, the California community colleges expect each of the districts to implement, to create and implement policies that cover at least the minimum requirements under the Education Code as well as the regulations. If a district doesn't do that, I think that that would likely be an issue

between the board and that particular district.

THE COURT: Yeah, that's what I'm getting at because this is now -- there's a hot dispute in this case about what's merely aspirational and what's mandatory or what's, you know, affirmatively directing. And so here is an instance where we see the district shall or the Chancellor shall.

And so to the extent there's a dispute among the parties about the prosecuting authority and what sanctions are at issue and what can happen, it's not clear to me. So we've got a regulation here that the Chancellor has exercised that says, Kern Community College District, you shall take these DEIA competencies and you shall incorporate them into all manners of your policies and practices, employment, and the like. And if you have a renegade community college district that says we're not doing it, then what?

MR. RUSSELL: I'm not sure, Your Honor, because I don't think that that has come up. You know, I would imagine it would be some kind of a referral between the board and that particular district. But, again, you know, I need to emphasize that the districts have wide latitude in which to create their policies and procedures. In fact, that's codified that districts are to operate as independently as possible.

And so, you know, the manner in which a district does implement these policies is left at the discretion of the

district. If they don't do it at all, I would imagine there would be some kind of action, but what that is, I can't say.

THE COURT: I understand there's a tenor of district autonomy or district discretion in judgment in the manner or how to implement. But it doesn't seem to me that it's debatable that the Chancellor is saying these are the minimum standards. You implement these however you see fit, but they ought to or they, quote, shall be consistent with these minimum standards. There's no discretion there.

MR. RUSSELL: That's correct. But bear in mind that what needs to be implemented are current and emerging evidence-based practices developed within the California community colleges or described in DEIA-related scholarship.

So it's essentially the districts shall acknowledge these things and consider them when creating their policies. If they don't do so at all, I suppose there may be some action. But, again, the latitude allowed to the districts is very broad in fulfilling that mandate.

THE COURT: Right. There are certain things, however, that are not broad. And the plaintiff points these out, and I'm going to recite them because I don't think that these are aspirational and I don't think that these are subject to much discretion at all.

53605(a), so the district is charged to implement regulations that provide faculty members shall employ

teaching, learning, and professional practices that reflect DEIA and anti-racist principles. There's no discretion there. The districts are charged and required to adopt wholesale everything that the Chancellor has set forth in these regulations.

MR. RUSSELL: Actually, I have to take issue with that, Your Honor. What I think you're referring to are the competencies and criteria that are referenced in the plaintiff's motion. Those are not regulations. Those are guidance, that is guidance that is provided by the Chancellor. And the only thing that can be enforced are duly adopted regulations.

And so the regulations provide that faculty members shall employ teaching, learning, and professional practices that reflect DEIA and anti-racist principles. How that gets implemented, again, is left to the broad discretion of the districts.

THE COURT: Yeah, I'm not -- I don't think we're saying anything inconsistent. I'm reading 53605 and it says "Faculty members shall employ teaching, learning, and professional practices that reflect DEIA and anti-racist principles."

So there is a requirement that this is an implemented -- this is a regulation from the Chancellor. And it's not telling the district to do something. It says

"faculty members shall." So the Chancellor is directing faculty members to do this. And do I have that wrong?

MR. RUSSELL: Well, Your Honor, that's not wrong, but there's no -- as we've talked about earlier, there's no mechanism by which the Chancellor can take action with regard to a particular staff member that doesn't do this. There has to be an interplay between the district policies and what the regulations require that falls upon it's an obligation of the district.

It's not something -- I mean the Chancellor is not looking at every syllabus or looking at every teaching plan of every professor. I mean what the Chancellor and the board is concerned about are the policies that are promulgated by each of the districts. And it's that policy that would say, well, faculty members, you do need to include DEIA concepts and proficiencies in your -- you need to be proficient in DEIA issues.

And the reason which they do that is it essentially, it enhances education and it enhances communication. I mean it doesn't say you will teach these things. It says that you have to be proficient in them. And if somebody doesn't believe or want to -- well, if they don't believe in DEIA principles, the best way in which to counter what those principles might be is to become proficient in them.

There's no mandate on particular speech or on a

particular curriculum or a particular syllabus. It's, I mean these regulations are there to tell districts to advise their instructors that they need to be proficient in these things. And how they implement them in the classroom itself is up to the district and it's up the professor.

THE COURT: If Professor Johnson is teaching cultural Marxism in his classroom, is he demonstrating proficiency?

MR. RUSSELL: I don't know. It would depend upon how he's doing that.

THE COURT: Okay. And that's obviously one of the crux issues in this case is I see that we're talking about related subjects but we might be two ships passing in the night because the claims here are that despite your assurance that the boards have -- the local boards have discretion in how they implement this.

Professor Johnson's concern is, well, if I don't meet what the board thinks is proficiency, I am subject to sanction in connection with my promotion and maintenance and my position. And that's going to become abundantly clear three years down the road when I sit for a review, but I want to know now. I want to know -- I imagine Professor Johnson wants to know the answer to that question today. If I teach a class on cultural Marxism, is someone at the board taking a note that I'm not demonstrating proficiency and, hence, can be

-- that can reflect adversely when it comes time for my performance evaluation.

Mr. Urban, anything to response on that point?

MR. URBAN: I think that would be quite speculative. The evidence that the plaintiff has presented, he has to show standing, he has to show a preliminary injunction is warranted. Paragraphs 100 to 105 or so of his declaration talk about what he's going to teach. And from that, it seems like quite a leap from that to a violation of 56305.

There's no implementing regulations from the district in effect yet. There would have to be discipline of this professor. It wouldn't be discipline. It would be a rating, and it's unclear how the districts are going to be locally interpreting and applying these regulations at this point.

So for those reasons, we'd submit that this is not a ripe controversy. Professor Johnson may have concerns looking at these regulations, but he doesn't know how his own district is going to be implementing them yet or enforcing them.

THE COURT: Well, the district does have the Board Policy 3050, correct?

MR. URBAN: That's correct, Your Honor.

THE COURT: And is it your position then that that's a mere policy and so if as of today, if Professor Johnson were to do something on cultural Marxism in his classroom, despite

the likely implication that that's inconsistent with 3050 that there's no sanction available for violating the policy?

MR. URBAN: I don't see how that's inconsistent with 3050. I think that you'd have to see how -- I mean 3050, there's only specific language that is challenged under 3050. It's physical and verbal forms of aggression, threat, harassment, et cetera. And you just can't connect that to what he's teaching, what he wants to teach in Paragraphs 100 to 105 of his declaration. He's talking about critiquing Howard Zen (phonetic). He's talking about critiquing, you know, intersectionality (phonetic) in some ways. That's just not a threat of aggression or a threat, intimidation, et cetera.

THE COURT: Does this -- then does this controversy become ripe, say, tomorrow, the district -- well, I know it can't work that fast but at some point in the near future, the district implements the regulations that incorporate and adopt what the Chancellor has directed them, directed it to incorporate and adopt by way of DEIA, then it's ripe?

MR. URBAN: Those are not disciplinary rules. They're rules about what professors are asked to incorporate into their teaching. So I don't see how someone could be disciplined for -- it's a rating, these are set out as how, you know, tenure review, how different aspects of performance are evaluated, and it's a component. It's going to vary from

district to district, potentially even how much it's incorporated.

The regulations talk about significant, and that's open to interpretation by the district. So for those reasons, it's not ripe. Board Policy 3050, that's really the only policy that's at issue of the district in this case, and it's just not implicated in what he plans to teach. So we'd submit for that reason that there's no issue with Board Policy 3050.

THE COURT: Okay. Let's stick with this issue.

So Professor Johnson has been investigated once already based on a complaint from Professor Bond --

MR. URBAN: Correct.

THE COURT: -- which related in part to issues of cultural Marxism.

MR. URBAN: That's correct, Your Honor.

THE COURT: Okay. And no finding --

MR. URBAN: I'm sorry. Let me -- I was just adjusting the microphone. I don't think that related to cultural Marxism, the complaint. I don't see how that did. The complaint was just in civility. He had a social media post that Professor Bond alleged was not -- breached policies in the district.

It was investigated, and Professor Johnson was cleared. So I think he can read from that that what he did did not result in a violation. It was not prohibited by the

Board Policy 3050.

THE COURT: Let's modify it then. So Professor Bond posts something that says the United States is a terrible country, and Professor Johnson reports and says look at this cultural Marxist. Okay. And that's not the exact bases for the investigation and the findings here.

But I guess what I'm trying to -- what I'm trying to get to is Professor Johnson alleges and he has in fact been investigated by the district for certain forms of speech. Whether they're under the auspices of incivility or otherwise, there's going to be a crossover with the types of speech that he is alleging that he plans and intends to undertake in the future. And I'm using cultural Marxism as just one of the examples that he includes in his complaint and his papers.

So I guess what I'm saying is regulations adopted, and we have a similar situation where there's an exchange on social media and a professor complains that he's been labeled a cultural Marxist by Professor Johnson. The board could do exactly what it's already done, which is investigate the complaint and now with the benefit of the newly adopted regulations, say and what's more, you are not demonstrating proficiency with respect to DEIA tenets and your conduct, whether or not it's incivil, is inconsistent with these regulations that we've just adopted.

MR. URBAN: I would see that as a stretch, with all

respect, given the situation that we have with the record. And let me just clarify something very quickly, Your Honor.

THE COURT: Sure.

MR. URBAN: The post at issue, he was called a critical race theorist. So Johnson, the complaint alleges, called Bond a critical race theorist and an SJW which is a social justice warrior. So just for the record, the cultural Marxism I don't think was part of that issue.

Your Honor's point is that he was investigated for a complaint that involved his speech. And the policy in California and federal authorities is that you need to investigate complaints generally. It's not an adverse employment action if there are no indicia of abuse in it. So it was investigated, he was cleared. He now knows that if he gets -- if he engages in that conduct, he's -- he can use that as precedent.

It just -- our position would be is that the California regulations that the Attorney General's Office is defending here is just they're not disciplinary and it's a stretch going from them to any kind of Article III standing, any kind of ability to amount of pre-enforcement challenge.

Really quickly, to get into federal court and get these judicial intervention, Johnson has to show Article III standing and for pre-enforcement challenge, that has to be a concrete plan to violate the regulations.

THE COURT: I understand. We'll get to standing in just a moment. But stick with my hypothetical here.

MR. URBAN: Certainly. Thank you, Your Honor.

THE COURT: If we go back to the actual allegation that Professor Bond complained on and the investigation, if there was a sustained finding, let's say that there was some finding that Professor -- what Professor Johnson had done was sanctionable. What sanctions could have followed?

MR. URBAN: What sanctions could have followed?

I mean if he's known to have violated -- I mean 3050 was implicated. He could have been disciplined if he was found to -- I mean they were investigating him to determine discipline.

THE COURT: What's an example of a discipline, a low-level discipline? A letter of censure?

MR. URBAN: A letter of censure, that's an example.

THE COURT: Okay. So take my hypothetical now. The district does exactly what the Chancellor has directed the district to do, which is adopt regulations that incorporate what the Chancellor says districts should do by way of minimum standards with respect to DEIA competencies and how those apply in the classroom and how those apply in respect to employment and promotion and tenure. Okay.

The next day, a professor complains against Professor Johnson having something to do with, I'm using again

cultural Marxism, but anything that's inconsistent with the regulations that the district has just adopted about what faculty, staff, and professors need to demonstrate in their classrooms with respect to DEIA. And now there's an investigation. And now there's a finding that sustained that in fact what Professor Johnson has done ran afoul of the implementing regulations with respect to DEIA.

MR. URBAN: To Your Honor's point, the regulation uses the word "shall." And at the beginning of the conversation today, this Court referenced that the Education Code talks about the Board of Governors being as part of the Education Code being a regulation that can support discipline. It sounds like that's where the Court is going.

It's just a long stretch from where we sit today to that happening, and we'd submit that the preliminary injunction standards, the barrier to relief for Professor Johnson standing requirements for a pre-enforcement challenge, that's another barrier. There's no indication that this would ever happen, and I think that it's going to be difficult.

THE COURT: I understand. All that may be true, but it doesn't get to -- I'm not getting a merits answer to the question. So whether or not that is going to happen, whether or not that's ripe, whether or not that's speculative, I don't care about any of that.

What I want to know is if Professor Johnson is

investigated for something that could be construed by the district as non-compliance with or lack of proficiency with respect to or just flat out in violation of minimum standards of DEIA competencies, he could be investigated and there could be a sustained finding and there could be a letter of censure.

Isn't that true?

MR. URBAN: No. I don't think -- I think that's -- based on -- I don't think we can say that with any certainty where we sit today. And I would --

THE COURT: It's not a possibility?

MR. URBAN: Well, we're not talking about possibilities for Article III standing and for a preliminary injunction.

THE COURT: I want to talk about standing. I want to talk about it, because we may be able to dismiss this case outright if you're saying that everything that Professor Johnson has reiterated in the complaint, his moving papers, and his reply is about what he wants to do and the regulations that the district is preparing to and is obligated to implement here consisted with the Chancellor.

If he does all of that, there's no possibility of discipline or sanction or employment action. I mean if you're saying that, then okay. But I don't think that's the case. I think that's why we're here is because Professor Johnson fears that if he does what he wants to do, the district can construe

that as somehow inconsistent with the regulations that it's going to adopt and then that can subject him to the same sort of investigation and sanction that he was facing previously.

MR. URBAN: Well, Your Honor, you asked for a merits answer. We would encourage the Court to dismiss this case based on standing and based on the preliminary injunction standards.

THE COURT: I can't. I'm a magistrate judge. That's before Judge de Alba.

MR. URBAN: Well, you can make a recommendation.

THE COURT: I can, but I'm not going to because that's not referred to me. What's referred to me is the preliminary injunction motion.

MR. URBAN: Your Honor, let me just --

THE COURT: And I'm trying mightily to get an answer to this question --

MR. URBAN: I know. And I will --

THE COURT: -- because I think it's pretty crux. It's not -- I'm not nipping at the edges and I'm not -- this is not tangential. This is the heart for this case. So --

MR. URBAN: Understood, Your Honor.

I will give you the merits answer, and I'll give you one of the merits answers and that is that the public employment rights of an individual like Johnson are limited. He's not someone who's, you know, on the internet or home or

on a street corner. He's somebody who accepted government employment and accepted government employment restrictions.

Police officers doing their jobs, sometimes they have to get into speech they don't want. Anybody who has a public employment job, someone who's employed at the judiciary who is a -- or, you know, someone who's employed in other aspects of civil life. Professors are exactly the same.

And if this were in front of the Supreme Court, the Supreme Court has not yet decided whether there are academic freedom rights for professors outside of Garcetti. The speech we're talking about, everything in Paragraphs 100 to 105 of Johnson's declaration is official duty of speech. In the Ninth Circuit --

THE COURT: Garcetti doesn't apply here. I know you've relied on cases in your opposition brief that I think turn on Garcetti. We'll talk about that shortly. But this is a Pickering case.

MR. URBAN: It is, Your Honor.

THE COURT: This is not a Garcetti case.

MR. URBAN: I know.

THE COURT: Okay.

MR. URBAN: That's where I was leading is that in the Ninth Circuit under Demers, he does have limited First Amendment rights in his scholarship and teaching. And this Court would have to intervene and say that the judiciary knows

better than the Board of Governors of California what professors are supposed to teach.

I think that Your Honor is talking about someone being disciplined for violating these regulations about what shall be taught. That just sounds like a very remote possibility. And if this were framed like the Court, like the case in Florida where it's something that professors can't say and can't do in the classroom, that will be one thing.

But this is something where they shall incorporate this if -- you can imagine the State of California saying, you know, climate change disaster recovery is an important issue and you have to talk about that in class. Would that be such an imposition? I would think not.

The Board of Chancellors, many stakeholders have thought about this issue and have put their efforts into crafting these regulations for what is perceived by the State of California to be an important public interest issue. And it would be improper, especially at this very early phase under these very limited facts for the judiciary to intervene. And --

THE COURT: Mr. Gura, I hope you're not -- you're being somewhat quiet. Thank you. But let me just pause and give you an opportunity. Any of these issues that you want to respond to?

In particular, Mr. Urban's notion, and I don't want

to put words in his mouth, you heard what he said but whether it's ripeness or speculative or the like that really there's no genuine need to fear by Professor Johnson here because -- well, because if he does what he wants to do, that is not necessarily going to subject him to scrutiny, investigation, or sanction.

MR. GURA: Okay. Thank you, Your Honor.

Where to begin? No rational person in Professor Johnson's position would feel free to express Professor Johnson's views on or off campus, in or out of class or committee without fear of retribution. Not would any rational person in his position feel free to ignore the mandates to teach or break anti-racism ideology in his instruction.

Even before these DEIA regulations came out, we had a complaint and we found out that these new regulations had come out and we amended the complaint. But there's a case or even before we get to these newer regulations because there is a long and unpleasant history of his directly threatening of Professor Johnson. First of all, he was investigated for a post that KCCB admitted was done not in his capacity as a professor.

Ninth Circuit law also states that posting on social media is not only part of your official duties as a professor or teacher but the defendants happened to agree with that. They said his Facebook post wasn't part of his official duties

and nonetheless he was investigated for it and are now told, well, it's okay because the investigation cleared him after he hired a lawyer and waited five months and it's okay because now he has precedent that he can use if there's another investigation. In fact, their termination letter noted that there could be another investigation the next time somebody complains.

The whole point here is not that he would survive an investigation for posting on Facebook, is that he shouldn't be investigated in the first place because this is obviously not in their business to regulate how he expressed himself on political matters. Beyond the investigation and the promises of further investigation and even the -- I guess the (indiscernible) we got here from my colleague, well, you'll have precedent the next time.

There's also the fact that Professor Garrett was fired for engaging in all the same speech that Professor Johnson wishes to engage in. We have this amazing document where first he was charged, and by the way, he was charged initially under Board Policy 3050, the civility policy did feature in the initial charges, but the final charges dismissed him for the very first thing, the very first thing they accused him of doing was publishing an op-ed in the Navy Seal of California that took issue with the school's position on cultural Marxism.

That is, you know, almost a textbook First Amendment violation to discharge somebody based on that. And Professor Garrett did not notify. He is Professor Johnson's direct predecessor as the head of the Renegade Institute for Liberty, a group of dissident professors that the -- that one of the defendants wants to treat like defective cattle. I mean we had this annihilations rhetoric.

THE COURT: Let me interrupt for just a moment.

Let me interrupt for just a moment. With respect to Professor Garrett and his firing, I want you to identify precisely what bases were cited for the decision to fire Professor Garrett that are directly applicable to Professor Johnson's position because as I read Professor Garrett was just -- that's a different creature.

I understand that there are some similarities, but I want you to precisely define like you've cited one, cultural Marxism. To me, the majority of the bases cited for the firing of Professor Garrett are not at issue in this case. But what else is precisely at issue here?

MR. GURA: Okay. Professor Garrett was -- I mean it's true they threw a lot of things on the board with Professor Garrett. The fact is that the message we get in any one of these things, obviously, they took the time to (indiscernible) him of his charges and put them in as the basis for dismissal in the final exhibit.

Aside from discussing cultural Marxism, there is the point that Professor Garrett criticized the curriculum which Professor Johnson has done and he's ceased doing that. Professor Garrett was criticized and was charged for not censoring speech in his role as the RIFL or RIFL, however you pronounce it, lead on their homepage. But some of the speech that he was charged with (indiscernible) was actually Professor Johnson's speech. Professor Johnson reacted to these charges by he deleted some third-party posts, but he also gave up the moderating position on that Facebook page and he handed it over to retired professors would be beyond the reach of discipline.

Professor Johnson has also turned down invitations to speak on the same radio show and talk to the same networks that Professor Garrett was fired for speaking with and for publishing with.

And so, you know, we see that in terms of posting on social media, speaking with the media, criticizing the curriculum, discussing certain topics, all of these things, there's a direct overlap between what Garrett did and what Johnson is refraining from doing that he would otherwise do and maybe had done a little bit before but not stop because the message that he's getting -- and not just from the termination of Professor Garrett but also these other exhortations that we get from the cases of the defendants.

There's the email from or (indiscernible) data boy who took the what might otherwise -- maybe there would be some argument that Section 51201 is not mandatory and it's just sort of, you know, fluffy language. But Kern cc'd, he understood it is mandatory. They said, you know, this is what we must do in contradiction to these other people that we don't approve so much that we want to treat like cattle.

So we have a series of, oh, there's also the fact that this all started with Mr. Garrett when he presented a lecture on the First Amendment and they thought that was unprofessional conduct. And that (indiscernible) another lawsuit which I guess is still going. We're not sure where that is --

THE COURT: Let me pause you there, Mr. Gura. Thank you for that. And let me turn to either -- any counsel at table here.

So to your point, Mr. Urban, the fact that the district has not yet implemented regulations, it's the case that certain regulations that pre-exist and exist now are read consistently with what the Chancellor has most recently directed districts to do by way of DEIA and anti-racist principles, correct?

MR. URBAN: I want to make sure I understand the Court's question. The Court's question is if we implement regulations, do they have to be consistent with --

THE COURT: No, no. I'm saying that there are regulations on the table now that while they do not expressly invoke DEIA or anti-racism, they are, for lack of a better word, the predecessors to what is on the table and what is coming. Let me try and let me fashion it this way.

So Professor Garrett is fired. He's fired in part because he's engaged in conduct that was inconsistent with 3050.

MR. URBAN: That was in his -- the 90-day notice that's in the public record.

THE COURT: That's in his 90-day notice. And the final notice, I'm not sure what -- I don't know if the bases were set forth in the final notice.

MR. URBAN: Your Honor, the final notice does not mention Board Policy 3050. The warning letter mentions it.

THE COURT: Okay.

MR. URBAN: And I think the Court's point is apt that it's different conduct for Garrett. I think there's a couple -- it's a long notice to Garrett, and plaintiff's counsel is pointing out some arguable similarities like being disciplined for posts that Johnson wrote.

Looking at the paragraphs of the evidence, you can't -- it lacks credibility in that you can't tell what those posts were. He doesn't say what the posts are. He mentions that I wrote some of those postings, Garrett's punished for

it. But he doesn't step the Court through the process of what the posts were, what they said.

And this is a preliminary injunction motion. This Court can weigh credibility, and it just doesn't -- that's the best they have, arguably, and it just doesn't pan out.

THE COURT: I think this feeds more generally into the analysis the Court needs to undertake which is, is there a genuine threat that there's going to be prosecution, for lack of a better word. Is there -- and what Professor Johnson points to in part is there is a pattern and practice or there is a history of the district seeking to enforce regulations and sanctioning professors who engage in non-compliant conduct.

And so what I want to say is there's precedent that Professor Garrett was fired in part for endorsing or lauding cultural Marxism. There is precedent in part that Professor Garrett was fired in part for things that he said on a radio show that Professor Johnson has explained he'd like to do the same thing but has foregone that for fear of similar sanctions.

So what I'm trying to get at is there is some precedent here, as Mr. Gura points out, that a professor who did the same or very similar things that Professor Johnson has attested he wants to has resulted in the firing of a professor in one case, so isn't it fair for Professor Johnson to say,

shoot, if I do the same things, I'm going to possibly be fired also?

MR. URBAN: Well, to answer your Court's question, to get past the standing hurdle, it has to be a concrete plan to engage in certain speech. The only concrete plan we have in the record is Paragraphs 100 to 105 what he plans to teach. He says I didn't go on a radio show because, you know, he was concerned about it, but that's not a concrete plan. That's the opposite. He's saying I'm not going to be doing that.

THE COURT: Let's say the Court disagrees with you on that.

MR. URBAN: Okay. Younger --

THE COURT: And now back to my question.

MR. URBAN: Certainly.

THE COURT: Yeah. So what's the answer?

MR. URBAN: Quickly, Younger v Harris supports what I was just describing, but the answer isn't that the president shouldn't be concerned. He shouldn't because his conduct is -- there's a long notice for Garrett. He shouldn't have the same kind of concerns as this Court's pointed out. It's different conduct.

You can look at the volume without going into detail. We don't want to go into Garrett's information. What's in the record shows there's a lot different from what the speech he wants to engage in.

THE COURT: I acknowledge that, but there are some similarities, too, and I think Mr. Gura has in general summarized those similarities. And so I'm trying to get to the point of put yourself in Professor Johnson's shoes. Your colleague is fired in part because he extolled the virtues of cultural Marxism and the board said that's a no-no and now Professor Johnson attests I guess cultural Marxism is off the table for me in my classroom, in my posting, in my interviews, in the speakers I coordinate to come to campus and present to an organization.

Is it unreasonable for Professor Johnson to say I'm probably going to be in the crosshairs?

MR. URBAN: I'd say it doesn't meet the standards for --

THE COURT: Is it unreasonable, that's my question?

MR. URBAN: I think that that term is not part of the legal definition of what we need to address for a motion --

THE COURT: No, but it's the question I'm asking you and the question is, is it unreasonable for Professor Johnson to say there's an injury in fact here in a pre-enforcement context. And part of the reason is because I've seen one of my colleagues disciplined for exactly the same thing that I want to do.

MR. URBAN: I think it's unreasonable because

Professor Garrett was not disciplined for the same conduct. It was not in his scholarship and teaching. Most of Professor Garrett's, just looking at the pure face of the notice, it's all outside the classroom. It's all things he said that is part of scholarship and teaching that is prohibitable by Garcetti even in the Ninth Circuit or it's something that's subject to another context. The context is different. What Garrett engaged in just from the face of the documents is quite different than what Professor Johnson wants to do.

It's a difficult test to get into federal court, and he's in good standing. His own Chancellor, the Chancellor of the whole district has said this gentleman is in good standing, no investigated complaints, no issues. That's quite credible. I think that defeats standing under these circumstances.

THE COURT: Mr. Gura, I do want to talk a bit about standing here. So Mr. Russell's position in the papers is that the Title 5 regulations at issue here don't directly apply to Professor Johnson and, hence, he can't be injured by them. And this informs why I started this discussion in part by asking, okay, well, if the district does something inconsistent with the Title 5 regulations, what happens. I'm not sure I got an answer to that.

But the point is here that, okay, so Professor Johnson is found to have done something inconsistent with the

Title 5 regulations at issue. Those regulations don't talk to professors directly. They talk to the district. And so because he can't be injured by violating those, he doesn't have standing.

And they cite the Barke case from the Ninth Circuit. I would note it's a Garcetti framework case, not a Pickering case. But putting that aside, why is the state wrong that there's no standing here given that the statutes that you're seeking to preliminarily enjoin aren't directly applicable to you or to a professor?

MR. GURA: Thank you, Your Honor.

Several reasons. First of all, I think standing here, you can look at it in three different parts. First of all, there is the pre-DEIA standing directly based upon the pre-regulations behavior and customs, pattern, and practices (indiscernible) with the way they interpret the Education Code.

With respect to Chancellor Christian who is concerned about the DEI regulations that she's in charge of dictating with (indiscernible), there are two problems with them for the (indiscernible). First of all, it is not true that the regulations have to be directly binding upon a party for the party to be injured by them.

We cited two cases in our reply, and I think they're both very apt here, the Virginia Pharmacy case in the Supreme

Court as well as the NRA case in the Fifth Circuit. Both of those cases concern what you would call consumer challenges to regulations that didn't govern the consumers but they limited what the consumers could access, prescription drug prices and firearms for certain people in the second case.

The Government took the position that, well, you know, this doesn't regulate purchasers, consumers. It regulates pharmacists and it regulates federal firearms licenses. But the fact is that the courts were able to dispense with that artifice. They said, look, the consumer are injured by the way -- they're limited, there are things they cannot do because of the way these regulations operate on the people who are licensed exclusively to deal with them.

Here, even if the regulation didn't operate against Professor Johnson, it definitely operates on Kern Community College District and it's going to be the feature of his evaluation. When he shows up at the evaluation in a couple of years, those state officials are going to follow the state law. And I suppose it's possible, it's hypothetical that some news about the fact that there are some state officials and state employees who ignore the law and don't follow the required procedures that they're told to follow (indiscernible) regulations.

I'm not sure that we're hearing from the Kern defendants that they intend to ignore law and that they

disclaim it. If that were the case, then perhaps we could agree to a consent judgment of some kind. They should be happy to enter into some kind of an agreed order not to enforce this law. But the fact is we all know they're going to enforce it.

And Professor Johnson is going to be injured by it because the words that come out of his mouth or do not come out of his mouth today are going to be a feature of how he's evaluated --

THE COURT: I think the district --

MR. GURA: -- under these regulations.

THE COURT: As I understand the district's position and I'll let Mr. Urban correct me if I'm wrong, but the district's position is, look, if the district is just following what the state law and the Chancellor's regulations direct us to do, we can't be in the crosshairs of this. We're complying with state law. And why isn't that right?

MR. GURA: Because (indiscernible) decided a very long time ago by Justice (indiscernible) and his colleagues and, you know, this is not -- I mean it's kind of a strange argument to say that they're municipal officers. They're not a municipality. If we were talking about Kern County, maybe they'd have some kind of argument, although even if they were municipal officials, they would have the problem of the fact that state law gives them discretion over ultimate employment

decisions.

In the Ninth Circuit (indiscernible) case, even if you are a municipal official applying state law, you're going to be liable unless it's absolutely mandatory to find some specific action, if there's discretion involved in your behavior, it becomes really your custom and policy.

Here, however, we don't even get there because they're state officials. The Kern Community College District is essentially an arm of the State of California. We would have been happy to sue them under 1983, but we can't. They're not a person. They have (indiscernible) immunity. If that's not so, we'll be happy to amend the complaint and name them as a defendant. But they are state officials, and state officials can be enjoined from enforcing an unconstitutional state law.

We know that most state employees --

THE COURT: Let me pause there, Mr. Gura. Let me pause you there.

And, Mr. Urban, I wanted to give you a chance to respond to that and the plaintiff's reply briefs. But you made the mention of the fact that the district is a municipality and Mr. Gura has cited case law to the contrary. Any response to that?

MR. URBAN: Yes. There's a case, Beard v. Nordsley [sic], it's cited in our -- in a footnote to our motion to

dismiss. Even under Ex Parte Young, the --

THE COURT: The motion to dismiss is not before the Court.

MR. URBAN: Certainly. Well, I'll describe it to Your Honor for the Court's reference.

That's a Northern District case that does apply the Monell standards in the context of a Section 1983 action by -- against a community college district. Under Ex Parte Young, the Monell standards do still apply. Under Monell and Footnote 54, it says that it doesn't override the immunity, the Monell standards of entities that can use the Eleventh Amendment. The Supreme Court there was just saying we're not overriding the Eleventh Amendment.

So once the Eleventh Amendment immunity is put to the side as it is in an Ex Parte Young case, the Monell standards re-appear and are incorporated. And that gets us to Sandoval.

THE COURT: Pause. Mr. Gura, there's no briefing and no response and no explanation and no allegation about pattern and practice under Monell. As to the college and district defendants, do you have to -- does Monell apply here?

MR. GURA: No, Monell does not apply. And even if it did apply, Counsel misreads it. I mean, first of all, our complaint does allege that they have a custom, policy, and practice of enforcing these standards.

THE COURT: Where is that?

MR. GURA: And we would also --

THE COURT: Where is that? Where is that allegation?

MR. GURA: It's in the complaint. We referenced it in our -- let me pull it up, Your Honor, because it is in our reply to Defendant Christian and --

THE COURT: No, you said it was in the complaint. You said it was in the complaint.

MR. GURA: Yes. The complaint cites the -- the complaint cites, let me see, I believe we do have it there, Your Honor. I'm sorry, Your Honor. It is there. I believe it's in -- we put it in -- I know (indiscernible) isn't looking for it. I know where it is. Thank you for your patience, Your Honor.

THE COURT: The word --

MR. GURA: (Indiscernible).

THE COURT: The words "pattern and practice" do not appear in the first amended complaint.

In any event, it's a small issue. I'm sure I can find it. If it's alleged to --

MR. GURA: Okay. So, Your Honor --

THE COURT: Go ahead.

MR. GURA: Okay. So let me pull it up. So, first of all, (indiscernible) Monell states that if you're suing a

municipal officer or a municipality, you have to point to some custom, pattern, or practice, ordinance of the municipality. An ordinance or a law is an official policy, right?

And so if I were suing Kern County and I said, you know, Ordinance 123 of the Kern County Code violates the First Amendment, it would not be a defense for Kern to say, oh, you're only suing over an ordinance, you're not suing us over an uncodified custom, pattern, or practice. That would be nonsense. It would say that you can never suit a government for enforcing an unconstitutional law unless you also allege that they have an uncodified practice which is also unconstitutional if you want to enjoin.

Respectfully, that's not contrary to the, you know, the entirety of 1982 doctrine.

THE COURT: I want to --

MR. GURA: (Indiscernible).

THE COURT: Yeah. I want to short-circuit this now. I think I'm going down a rabbit hole and your colleague helpfully messages Paragraph 58. So I've got what I need on this, and I don't want to detract what I think -- it's an important issue. Let me just pause you, Mr. Gura, and hand the mic to Mr. Urban and Mr. Russell.

I don't know how much fruit is going to be born by further discussing Monell. I understand that the parties are at lawyer heads on whether this framework applies. I can

figure that out after this.

MR. URBAN: Understood, Your Honor.

THE COURT: But if there's anything else that you want to respond to.

MR. URBAN: Certainly.

The important Monell -- there's something that the Court just mentioned that the district defendant should not be liable for following state law under Section 1983, every claim of Section 1983. And we're required to follow the Chancellor's regulations, so we shouldn't be enjoined. That's the import.

THE COURT: I get it.

Mr. Russell, anything further, anything responsive to what Mr. Gura has just addressed on this issue?

MR. RUSSELL: No, Your Honor.

THE COURT: Okay. Let me pivot a bit and talk more about what you probably all came here to talk about which is the merits.

Pickering applies; Garcetti does not. Garcetti is informative, but this is a Pickering framework case. And if anyone disagrees, please speak up. Pickering applies to speech related to scholarship or teaching, quote/unquote. And now I'll go from Mr. Russell to Mr. Urban over to Mr. Gura.

And, Ms. Reilley, I don't -- obviously, interject. I'll let you play zone defense and it's not to the exclusion

of everyone. I'm just saying there's a state and there's a district and college.

But so, hypothetical number one, if a Bakersfield faculty member promotes to students through his or her speech DEIA tenets, anti-racism tenets in the classroom, this is a professor extolling what the Chancellor has said, it's consistent with minimum standards which is diversity, equity, inclusion, accessibility.

And a professor is endorsing those tenets and is speaking favorably about those tenets in the classroom. Is there any disagreement that that constitutes a matter of public concern under Pickering? So we're in the classroom and we're talking about diversity, equity, inclusion, accessibility.

MR. URBAN: No, Your Honor.

THE COURT: No. Okay.

If a Bakersfield College faculty member denigrates to students through his or her speech DEIA tenets, is there any disagreement that that likewise constitutes a matter of public concern under Pickering?

MR. URBAN: You know, I would want to hear the context. There's case authority that even within the context of public concern, outbursts, certain statements that are inappropriate, there's a -- it might not be public concern. There's a case on that recently, the Hernandez case, describes

for hate speech, it's a sliding scale that can be -- you could be talking about public concern and some statements could fall outside of that based on certain characteristics so I --

THE COURT: I understand that there's that escape patch, for lack of a better word. There's that branch and sequel. But let's take one thing that Professor Johnson has attested to, which is he has abstained from protesting drag queen hours at the campus. If he in his classroom protests drag queen hours in the manner that he's attested to in his declaration, which I think -- I don't think there's any dispute that that would probably be inconsistent or contrary to minimum standards as they've been articulated in the regulations, that's a matter of public concern, is it not, that there's an activity going on on campus and here's the other side of the coin?

MR. URBAN: I'd have to refer to the Hernandez case and the concept that you'd have to hear what he had said. I mean under certain circumstances, the public concern -- an issue of public concern, you know, the rights of trans individuals could come outside of that if it were to qualify as a certain type of denigrating hate speech. It could under some circumstances. Courts have held that in other contexts.

THE COURT: If it's not, if it doesn't fall into the exceptions of hate speech or harassment or otherwise separately disqualifying?

MR. URBAN: Yeah, in general in the abstract, trans rights is a public concern.

THE COURT: Okay. So that's a matter of public concern. I think that's right.

So Professor Johnson has outlined certain speech and I guess for speech-related activities that he has abstained from for fear, reasonable or unreasonable, that that type of speech could subject him to sanction under the 53600 regulations, '02 and '05.

What -- and I'm going back to Pickering. I'm trying to do the Pickering analysis with you here. So Pickering applies to "speech related to scholarship or teaching." What, if any of this is speech related to scholarship and teaching?

A classroom discussion in general about cultural Marxism, would that constitute speech relating to scholarship or teaching? Mr. Russell?

MR. RUSSELL: Again, I would have to -- it has to be placed in context. I mean my concern are the regulations, obviously, and the Education Code. And, again, going back to the language of the regulations, the regulations are asking the districts to have their staff be proficient in DEIA issues.

So one of the ways in which you do that is by learning as much as you possibly can about DEIA issues and concerns. I think that's what professors are supposed to be

doing is to broaden their scope and to broaden their base of knowledge. And if a professor comes in and says here's what DEIA stands for and I don't agree with it, I think that it's cultural Marxism, I don't think that that violates regulations. I mean how could it? He's proficient, she's proficient in those policies. And she's disagreeing with them, but that doesn't violate the regulation.

THE COURT: The regulation --

MR. RUSSELL: The regulation requires that the staff be proficient.

THE COURT: I hear you on the demonstrating proficiencies, but the regulations encompass a lot more than that. So 53605(a), faculty members shall employ teaching and professional practices that reflect anti-racist principles.

MR. RUSSELL: And in particular, respect for and acknowledgment of the diverse backgrounds of students and colleagues. So what they're asking professors to do is essentially accept where students and colleagues are coming from. And if a professor -- they have to respect that, but it doesn't mean that they have to agree with it.

THE COURT: Well, can they extol cultural Marxism in their endeavor -- in Professor Johnson's endeavor to present both sides of the coin, despite the regulations that require him to employ teaching and professional practices that reflect DEIA and anti-racist principles. So he incorporates that and

presents it but says there's another side of the coin here, let me present that to you.

Is that consistent with the regulation?

MR. RUSSELL: Absolutely.

THE COURT: Disagreement with that, Mr. Urban?

MR. URBAN: I don't disagree.

THE COURT: Mr. Gura?

MR. GURA: We disagree with that. Mr. Johnson's declaration goes actually into some detail as to what these different theories entail. But I think the best evidence of what the action is seeking to do here is the Chancellor's competencies and criteria. And a lot of this stuff is not about, oh, I need to be aware of this and understand our theory.

If you look at what they're demanding professors do, it says that professor satisfies the cultural competency theme, for example, has to acknowledge the cultural and (indiscernible). Well, what if Professor Johnson doesn't want acknowledge intersectionality? It calls for self-reflecting, engaging in self-assessment to one's own commitment to DEIA (indiscernible) biases. Well, what is Professor Johnson doesn't think he has any (indiscernible) biases and he doesn't want to reflect on anti-racism ?

In fact, if we go back to the sort of the

grandfather provision, 51201, it says we must practice anti-racism. We have to -- an anti-racist acknowledges certain things, understands certain things, sees the world a certain way. This is not about, you know, describe the theory of relativity and you can teach physics class. This is about actually believing, advancing, celebrating, committing yourself to a greater (indiscernible), that's not the point, political ideology.

What about the service theme, to go back to the competencies? If a professor satisfies the service theme, advocates for and advances DEIA anti-racist goals and initiatives, well, that does not seem like simply, you know, understand our political theory. You have to actually service, you have to be thinking this, you have to advocate for it and advance it, you have to contribute to it.

This is well beyond being current with some latest notion of the world. This is about an ideological mandate. This is about making sure that only people who think a certain way, believe certain things, and are willing to teach certain things and make sure that onboarding new faculty must know their commitment to the DEI conflicts.

I mean this is a very pervasive program of ideological program in the (indiscernible).

THE COURT: Let me pause you there, Mr. Gura.

MR. GURA: This is well beyond --

THE COURT: Mr. Russell, so Mr. Gura is alluding to it's not just acknowledging, it's advancing which is a slightly more affirmative charge. Do you agree or disagree with him that in fact the professors under these, the regime of regulations both from the Chancellor and as they trickle down to the districts implementing them, you don't just acknowledge, you have to advance.

And when it comes time for tenure review or the three-year review, we're going to take a look at what you've done over the past three years, and if you're consistently in your classroom not advancing these tenets, that could be subject you to adverse performance evaluation.

MR. RUSSELL: Well, Your Honor, I think the words "advance" and "mandate" do not appear anywhere within these regulations, so I would disagree. It requires proficiency. It requires knowledge. And to think that a professor would not want to engage in the pursuit of knowledge, it's almost offensive. I mean the regulations require professors to know these things. And if they want to present a countervailing viewpoint, they can do so.

Now they may be evaluated poorly, they may not have students in their class. But that's a whole different -- that's a different criteria for evaluation.

THE COURT: But am I right that at the three-year review when the professors at Bakersfield College are charged

with and they're going to be evaluated with respect to their maintenance of proficiencies with respect to these DEIA and anti-racist tenets, that a professor like Professor Johnson reasonably is subject to if not adverse action, at least a disfavorable performance evaluation because he in fact hasn't met the minimum standards. All he's done is parroted what the regulations tell him to parrot.

But in his presentation, it's clear from the student evaluations that in fact he's advancing and shows personal preference for an ideology that's completely contrary to or inconsistent with the Chancellor's tenets.

MR. RUSSELL: Well, but again going to the regulation, it's 53602 (c)(4), the evaluation is to place significant emphasis on DEIA competencies, not mandates, not requirements. You have to show that you are knowledgeable about DEIA issues. And I think that that acknowledges, you know, the diversity of California community colleges.

Now if a professor -- you can be competent in something and not agree with it. In fact, I think that that's usually the most zealous advocate is somebody who knows the minute detail of issues and says I don't agree with those and I'm going to explain to you why. That would be showing DEIA competency.

Now if the students aren't coming to the class, that's a whole different issue.

MR. GURA: Your Honor?

THE COURT: Just a moment.

So, Mr. Russell, Page 16 of your opposition brief, this is exactly what you say. The regulations do not impose any penalty on Johnson if he chooses to express a viewpoint counter to DEIA standards. And you framed it helpfully for me that in fact the district can or should construe that sort of course of conduct in the classroom as demonstrating knowledge and proficiency, not acceptance, outright challenging, outright hostility. Still demonstrates proficiency?

MR. RUSSELL: Well, it depends upon -- I mean proficiency means proficiency, you know, so you would want that professor to know about these issues. I mean it's a provocative class when a professor presents something and then says I don't agree with it, tell me why I am wrong. But there's nothing in these regulations that would say that that is somehow exhibiting non-proficiency.

THE COURT: Mr. Gura?

MR. GURA: Yes, Your Honor.

I think (indiscernible) demonstrated skill. I mean if we just go back to Section 51201(b) which is we get into all this, race and diversity means that we must intentionally practice anti-racism, acceptance, and we must respect -- we must have these understandings. In order to have race, diversity, (c), we also acknowledge that institutional racism,

discrimination, and biases exist and that our goal is to eradicate these from our system.

Professor Johnson does not acknowledge that every system in society is permeated with racism and this group conflict is the essential organizing principle of society and history. And when you get down to the pedagogy that then flows from this, he has very specific concerns with operating a classroom under theories that come from that, and his declaration speaks about that.

I think it's amazing to hear the state try to say, no, actually this doesn't require anything. Well, then how about let's agree to an injunction against Professor Johnson -- you know, we can perhaps come to some concession to the other side that he's allowed to criticize -- you know, if he's really not mandated to say anything, if he can't be punished for rejecting it, if this is all just hot air and, you know, lather, then they can take a more formal position of saying these things.

But the reality is that there's a lot of mandatory language in these regulations. There's a great deal of mandatory personal directive language in the competencies and criteria. And, of course, we also have in this district a history of political dissent being (indiscernible) even before these new regulations came out under the guise of Section 51201(b).

This is a real immediate danger to anyone who wishes to disagree with the state's official ideology or who does not wish to parrot it. I think that's obvious from the text of the regulations and the text of the competencies and criteria.

THE COURT: I'm looking at 53602 now. I mean I know, Mr. Russell, I said just a moment ago that the way you framed it that by way of demonstrating proficiency was helpful. But just take a look at (4), "place significant emphasis on DEIA competencies in employee evaluation and tenure review processes."

Sure, I suppose if you have, let's say, professors at the opposite ends of the spectrum on they equally understand what DEIA means and you have a professor who is endorsing, promoting, sponsoring, I think consistent with the Chancellor's overarching intent as articulated in the regulations, extolling those tenets and a professor like Professor Johnson who I know just as much about this as you do if not more. But my classroom comes with a much different tenor. It comes with a very skeptical, challenging, and perhaps hostility.

I have to imagine that this is written in a manner such that the professor who extolls the virtues is going to be favorable considered with respect to employee evaluation, whereas, a professor who demonstrates hostility, albeit competent hostility towards DEIA is not going to be looked

upon as favorably in the employee evaluation process.

MR. RUSSELL: I don't know, Your Honor.

THE COURT: You don't know. You don't do this for a living?

MR. RUSSELL: No, that's --

THE COURT: This is Mr. Urban's lane.

MR. URBAN: Actually, none of us do, and that's why the Court would have to speculate what would happen. It could be that he could be an excellent professor who is very skeptical but satisfies these criteria very well by taking, you know, one or two class days in this session and really talking about these issues, which the State of California has determined to be quite important, as important as any social issue.

We just don't know. And Demers says that courts should hesitate before intervening in academic affairs of this nature.

THE COURT: I'm going to present two cases to both sides and I want you to tell me why this doesn't fit here. So to the defense team, the Ninth Circuit's decision in Rodriguez, this is a case where the teacher sent emails promoting or endorsing Larussa (phonetic). It was deemed a matter of public concern by the Court of Appeals, and the Court of Appeals at 708 says in general, this is not -- this is my summary that the government may not silence speech

because the ideas it promotes are thought to be offensive. The right to provoke, offend, and shock lies at the core of the First Amendment. This is particularly so on college campuses.

And it's a case cited by Professor Johnson, not surprisingly, for the proposition that as laudable or as noble as the DEIA regime is to some, to many, maybe to most, certainly not all, to the extent that you're requiring professors to advance that ideology in the classrooms to the exclusion of highlighting or even outright favoring and endorsing contrary or inconsistent ideologies and principles, that that -- the Ninth Circuit has said on a college campus in particular, that's a no-no.

So why doesn't Rodriguez control here in that respect?

MR. URBAN: If this is Rodriguez v. Maricopa, that case involved -- the first quote from the case talks about censorship prohibition, determining something is offensive. Here the regulations don't do that. They ask professors to teach something. Nowhere does it say these regulations if you deviate from them, that's offensive, you're going to be punished.

And that's what the concern was in Rodriguez, that someone -- a professor had said some things online, there was a demand that he be punished. And the district decided not

to. He was found not to violate Title VII. Academic freedom and First Amendment are not actually at issue in that case, but there's certainly First Amendment, there's certainly a lot of rhetoric about the First Amendment in that case.

Our point is it doesn't apply here because it talks about censorship. And these DEIA regulations are not doing that.

THE COURT: Not directly. But if you take the allegations as they're presented in the complaint and in the preliminary injunction, the functional outcome of these, although they don't affirmatively censor like you cannot say this, they can be construed to say you must say this. And so if you're saying something different, to me it's an indirect form of censorship in that what the court sets forth in Rodriguez could apply equally.

MR. URBAN: It's a very general rhetoric. I would submit that what they're saying is you have to teach this and it's not saying you have to say like in an oath case, that you personally believe this. They're saying that this has to be taught, and that is up to the discretion of the instructor.

THE COURT: I got it.

Okay, Mr. Gura, I know you addressed this in the reply, but I want you to tell me one more time and I want to give the defense team an opportunity to respond to this.

So Downs, the Ninth Circuit's holding in Downs that

an arm of the local government such as a school board may decide not only to talk about gay and lesbian awareness and tolerance in general but also to advocate such tolerance if it so decides and restrict the contrary speech of one of its representatives.

And there's facial similarities. I can see the appeal to the defense of the Downs case in that in a school setting, at least, school naturally and the district here naturally has discretion to extol certain virtues and in that case, gay and lesbian awareness and tolerance. And what comes with that is at least the limited ability to restrict contrary speech of one of its representatives.

Why doesn't the Downs case control here?

MR. GURA: For several reasons.

First of all, Your Honor, Downs, the school had put a bulletin board and on the school's bulletin board, they could put whatever they want and there's no question that they can put their message, whatever it might be, in the hallway bulletin board. The teacher, Mr. Downs, wanted to put up his own bulletin board I guess on the same hallway taking a different view, and at that point, he did not have the right to post his own bulletins, his own bulletin board. It wasn't a public forum.

And the school didn't owe him a right of reply to its message, certainly not in that forum. Also, Mr. Downs was

a high school teacher, and the rules are different under the First Amendment. Academic freedom is a different matter for college professors than it is for the lower levels of education. Many of the cases have hesitated to extend the same level of academic freedom to a high school setting or a lower school setting.

Meriwether in the Sixth Circuit comes to mind, but -- when they made that distinction. But this is not Downs. This is about a college. This is about a professor. And let's get back to exactly what it is that they're telling him to do because I'm not quite sure that -- I really want to get back to this competence point. I think it's important. Again, the pedagogy curriculum theme and I'm quoting here, this is quoted also on Paragraph 54 of the first amended complaint and this comes right out of I believe it's Page 5 of the competencies and criteria, A professor satisfies this theme, develops and implements a pedagogy and/or curriculum that promotes a race-conscious and intersectional lens, develops and implements a pedagogy that promotes equitable access, whatever equitable might mean to an anti-racist, develops and implements a pedagogy that fosters an anti-racist and inclusive environment to (indiscernible) or you create that environment in your class if you think it's important or not. Maybe you think it's harmful.

So this is -- and also, of course, demonstrates an

ability to teach cultural (indiscernible) pedagogy. So this is not merely about knowledge of something. Every chance they get, they tell you that this is about what we must do, what we must teach, (indiscernible) and how you must act, and how you have to see the world. That's very different than a bulletin board in a high school where the state can do what it wants.

With respect to Rodriquez, the Ninth Circuit made very clear that the First Amendment was (indiscernible) in guiding the question of whether or not workplace harassment was occurring here and whether this behavior could be enjoined. In fact, a quote here from Rodriquez itself, Page 709, These First Amendment principles must guide our interpretation of the right to be free of (indiscernible) workforce harassment under the Equal Protection Clause.

And the position the Ninth Circuit took was, look, you're a college, some ideas are going to hurt your feelings, they're going to offend you, it's not harassment. The professor that you don't like also has First Amendment rights to express himself, even if this is not the nicest email. If the email system is used for these purposes, it has to be open to all viewpoints.

And here we definitely have a case of viewpoint discrimination even before we get to the DEIA regulations. And then with the regulations, we have viewpoint discrimination and compelled speech. And there's not a single

word anywhere in these opposition briefs that even tries to engage in a compelled speech analysis where we're not presented with how this could possibly pass through the scrutiny, what exactly is the compelling statement, how is it narrowly tailored.

How is this anything other than a blanket admonition to Professor Johnson to extol and live by the government's ideology? In that type of case, the government simply loses. It has no legitimate interest.

THE COURT: Okay.

Mr. Russell and Mr. Urban, I want to give you an opportunity to refute or rebut the bases on which Mr. Gura has explained that Downs does not control here partly because it's a high school class. Any response to what Mr. Gura has just set forth here?

MR. URBAN: I'll go really quickly, Your Honor. This is not a strict scrutiny case. This is a Pickering case, as this Court has pointed out. I'll leave it to Mr. Russell.

THE COURT: I understand.

MR. RUSSELL: Yeah. And, Your Honor, briefly, again, we keep hearing about mandates and requirements. I'm looking at the plaintiff's reply brief discussing Downs, and Downs, you know, there's the allegation that somehow these regulations are requiring someone to believe a particular thing or to express a particular thing. And they don't do

that.

I mean, again, the regulations talk about proficiencies and knowledge, which I would submit is what is, you know, the pedagogy that we would want in the State of California is for professors to be knowledgeable, even if they don't agree.

THE COURT: Okay. I've gone a lot longer than what you've probably -- what you asked to go. So I think I've got about 15, 20 minutes. I'm of course going to give you an opportunity after I've kind of honed in on what I wanted to talk about to tell me anything else. I hope you can perceive that I'm familiar with your briefs.

I'm asking you not to regurgitate or rehash what I've already read countless times. But if there are any gaps to be filled that you don't think I've sufficiently addressed or you're perceiving that I haven't -- I didn't catch it, just say the word. But let me just wrap up with two points here.

Mr. Urban and perhaps also you, Mr. Russell, challenge Professor Johnson's plan on whether it's sufficiently concrete. And, Mr. Urban, in your brief, in your opposition, you've characterized the various forms of speech that he has alleged that he's abstained from his curriculum only. But it seems to me it's more than your traditional curriculum that he's abstaining from, right? He's abstaining from related activities but different activities such as

posting, such as speaking outside of the classroom, coordinating speakers outside of the classroom, sitting for interviews on radio shows and the like.

So is it his plan, concrete or not, it involves much more than just pure curriculum?

MR. URBAN: Well, it involves more, but he has to have a concrete plan. He's saying I'm not going to do this, so that doesn't -- that just --

THE COURT: Well, he says I have not done this.

MR. URBAN: Right. But the actual standard under the Ninth Circuit is he has to articulate a concrete plan, how, when, why. That's the Lopez case, that's other cases. And he's saying I'm not doing this. So technically, and really out of the blocks, he doesn't satisfy the standard. Also, there's insufficient detail of how, when, what. He's saying I'm not doing this, but he's --

THE COURT: I guess I don't read Lopez to identify precise dates and times. What he said in general is that I have this whole agenda and curriculum ready to unroll that I'm not. And he has exhaustively set forth discrete pieces of that that he's not doing and that he said he will do.

MR. URBAN: That's Paragraphs 100 to 106. That's right. When he's teaching his class, well, he talks about what he's going to instruct, the books, et cetera. The

problem is none of that is 3050. None of that is a threat of aggression.

So when you're limited to that, then you need to be -- it's just the board policies cast aside, it does not apply there. But then this Court would point out but doesn't that implicate these regulations. And that I think is a crux issue.

From our perspective, we're not liable for under 1983 or otherwise for abiding by the state regulations. So the current district defendants are out of the case for that reason there. And then you go to the merits of the regulations themselves as the Attorney General has articulated. And there, they've laid out the bases for them, how they're in many respects aspirational and not aspirational, then the requirements are subject to interpretation by local districts later and then the Attorney General falls out of the case, as well.

That's how the case has to be interpreted at this point.

THE COURT: Okay. Let me turn quickly to the vagueness challenge. Mr. Gura, do I have it right that you're challenging on vagueness grounds 3050 and ita prohibition on verbal forms of aggression, ridicule, or intimidation? Your contention is that based on what Professor Johnson wants to do, as he reads those words, he thinks to himself I have no

idea whether this is compliant with or inconsistent with 3050 and, hence, it's void for vagueness. Is that in general correct?

MR. GURA: That's correct. We have no idea what this requires in terms of actual notice to a person who is in this environment --

THE COURT: Isn't there a case? I have to imagine that Kern Community College District is not the only district in the country that has used this exact phrase or at least words similar to it. I have to imagine that there have been other challenges, if not DEIA-related challenges.

But tell me there are courts that have looked at these words and said that in general these words are not vague in their application.

MR. URBAN: Well, the case we cited. I'm sorry.

THE COURT: Go ahead, Mr. Gura first and then, yeah, Mr. URBAN.

MR. GURA: Sure. Well, civility regulations have been struck down as vague. One case that comes to mind is a case we litigated in the Eastern District of Pennsylvania. It's not in our papers. We have page limits, but the case called Marshall v. Amuso. There was a civility policy that a school board applied to procedures at its public comments section, and there were other direct participants' so-called abusive speech and things of that nature. That was struck

down.

There's a -- the court there called a Sixth Circuit case whose name escapes at the moment right now, but we can submit that in the letter if you'd like, Your Honor.

THE COURT: No problem. I've got the Marshall case and if that's the case you're saying is the Sixth Circuit --

MR. GURA: Yeah. So civility is in the eye of the beholder. Oftentimes, you know, there are advise columns written about this, right, because people don't know how to behave or, you know, they're going to take this the wrong way. You know, but when you're talking about a regulation, the violation of which can cause a very serious letter the kind that Professor Garrett received, people really need to have notice of what it means. And we don't think this language provides enough notice.

It does, as the Hernandez case sets out the standard, it fails to afford employees a reasonable opportunity to understand what it prohibits and --

THE COURT: That's fine, Mr. Gura. You've answered my question. It was specifically give me a case that goes towards this and points me in the right direction, so you've done that.

Let me turn to the defense team. Countervailing cases that say that this type of language -- you've cited one in the opposition brief. It's different. I know you

characterize it as even more prone to vagueness than what we have here, but any case besides what's cited in the papers that I should be looking at on the vagueness challenge?

MR. URBAN: We'd be happy to provide supplemental briefing, but I imagine Your Honor is interested in getting this resolved. If you'd like supplemental briefing, we'd be glad to provide it.

THE COURT: I'm interested in the question of courts who have addressed on vagueness grounds policies, procedures, regulations that are similar to 3050's words, verbal forms of aggression, ridicule, or intimidation. You're welcome to submit something. Please don't make it more than a page or two. You can file it as a letter brief or whatnot, but I don't need any more argument. I just want me and my clerk to have a little help finding cases that flesh this out at the margins a bit better.

So I think last question here for you, Mr. Gura, so one of the consequences or sanctions -- those aren't your words, that's my words, but you have characterized that Professor Johnson has "effectively been excluded from serving on selection committees." Do I have that right?

MR. GURA: Yes.

THE COURT: And that's in part because of his history or reputation or the knowledge generally that he's not going to extol DEIA and anti-racist principles?

MR. GURA: It's because he does not want to undergo the DEIA training and regime and he does not want to apply DEIA standards in making those recommendations and in passing upon --

THE COURT: So this is voluntary on his part?

MR. GURA: Well, no, Your Honor. He would be happy, he would return to the selection committee as he has before, but he does not wish to undergo the DEI process and he doesn't want to apply DEI in those committees. And now it's required that he use these principles, these anti-racist principles in making recommendations on faculty interviews.

THE COURT: Well, that's --

MR. GURA: And so --

THE COURT: There seems to be a difference of opinion in how these Policy 3050, its application and the regulations with respect to demonstrating proficiencies apply. I think the parties have very different ideas about that.

But I guess what I'll say it differently, has he attempted, has he pursued seeking to rejoin or to join the selection committee?

MR. GURA: No, because he doesn't want to go through the training. He received an email saying if you want to be considered for this, you need to do this training. So he's been told effectively not to apply. There is --

THE COURT: Well, that's a jump here. It's one

thing to attend training. I'm sure Professor Johnson in his long career has attended training on subject matters that he doesn't necessarily agree with. So I just -- effectively excluded seems a little exaggerated here.

It's whether it's him self-censoring or it's him saying, well, if that's a prerequisite that I attend training, I don't want to attend the training so I'm voluntarily not going to seek to participate in the selection committee.

MR. GURA: Your Honor, it's a little bit more than that. I take Your Honor's point. But one of the comps and criteria do discuss the fact that faculty are expected to use this in introducing new qualities to DEI obligations and the California Community College's commitment to anti-racism.

So this is a preview of this is now a feature of hiring, okay. This is -- it's not just that existing faculty are required to follow all the regulations. It's that people are hired now according to this ideological litmus test, and Professor Johnson is going to be expected if he's going to be on the hiring committee and screening committee to apply these concepts as he evaluates potential faculty and he doesn't want to do that.

THE COURT: He was never told that he cannot join the selection committee?

MR. GURA: No.

THE COURT: Okay.

MR. GURA: Not (indiscernible).

THE COURT: Okay.

I've infringed on your lunch hours or maybe not you, Mr. Gura, if you're in fact back in Washington D.C. But I do want to give you an opportunity to, if there's anything in wrap-up, not summation or -- but anything that you want the Court to take notice of that you don't think I've given sufficient treatment to by way of my questions to you.

So Mr. Russell first.

MR. RUSSELL: No, Your Honor. We would submit on the papers. One thing I guess I do want to point out, it's a relatively minor point, but, you know, plaintiff has been referring to Section 51201 and particularly the obligations that were imposed under (d), you know, about, you know, honoring inclusiveness and diversity.

That regulation has been around since 2020. So I'm not sure what the exigent circumstances are for a preliminary injunction being hauled in here. Professor Johnson has been able to navigate the rocky shoal of this particular regulation for three years. I don't know why we're here on a preliminary injunction motion.

THE COURT: I get the point. Thank you for that.

Mr. Urban?

MR. URBAN: Nothing further, Your Honor. Just to

sum up, there's no standing in this case. And if we get to the merits, then the rights of the institution to chart its course predominate.

THE COURT: Thank you.

Mr. Gura, anything further?

MR. GURA: No, Your Honor. Thank you so much. We appreciate Your Honor's thoroughness. But if I may just respond very quickly to the point that my colleague made.

Yes, the relation might have become operative in December of 2020, but it didn't become a problem I don't believe for Professor Johnson until we got -- we started getting the holiday email from President Dadabhoy and the school at some point adopted this as the operative guideline for the EODAC Committee that now guides the school's integration with this. And it's become more of an issue.

So I think that we've seen an escalating patter of behavior over time from KCCD, and when we get commands and directives under this provision, it's something that might be challenged in a matter of months later.

Thank you, Your Honor.

THE COURT: Okay. With that, the matter of the plaintiff's motion for preliminary injunction is submitted. I thank the parties for your briefs. They were very helpful in focusing the Court today, and your arguments have been

likewise useful.

And I appreciate your professionalism. I understand that this is a very -- this is not my run-of-the-mill Social Security docket. And this is a very important issue and a contentious issue. And I respect the fact that both sides could come to court today with level heads and professionalism. So thank you for that.

I'm committed to issuing findings and recommendations timely. And I'm committed to doing that within a matter of weeks, not a matter of months. So I appreciate the parties' patience. I'm sure you're aware that the district is incredibly impacted, and I think I have the largest docket of any magistrate judge in the country with over 450 cases that I manage, unfortunately. But that's just the reality of our resourcing here.

So I appreciate your patience. I do invite you within the next couple of days to submit short two-page letter briefs addressing the vagueness issue, in particular. If there's space at the margins or you've got your nine-point footnote that you want to log in something else, also, that's fine.

So with that, the matter is submitted. Have a very good day. Safe travels.

MR. URBAN: Thank you, Your Honor. You, too.

MR. RUSSELL: Thank you, Your Honor.

THE COURT: Court's in recess.

MR. GURA: Thank you, Your Honor.

(Proceedings adjourned at 12:12 p.m.)

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C E R T I F I C A T E

I, DIPTI PATEL, court-approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS Date: September 9, 2023

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

LOREN PALSGAARD, ET AL., *Plaintiffs*, v. SONYA CHRISTIAN, ET AL., *Defendants.*	Civil Action No.: 1:23-cv-01228-ADA-CDB **DECLARATION OF BILL BLANKEN IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** Date: October 2, 2023 Time: 1:30 pm PDT Place: Courtroom 1, 8th Floor Judge: The Honorable Ana de Alba

Pursuant to 28 U.S.C. § 1746(2), I, Bill Blanken, declare the following:

1. I am one of the plaintiffs in the above-captioned case and a resident of the State of California. I am over eighteen (18) years of age and fully competent to make this declaration. I knowingly and voluntarily make this declaration in support of Plaintiffs' Motion for Preliminary Injunction. If called as a witness, I believe I could and would testify competently under oath to the following facts, which are based on my personal knowledge.

2. On September 19, 2023, I received an email from the State Center Community College District's Human Resource Office entitled "DEIA Competencies & Faculty Evaluations [Approved by Vice Chancellor Mosier]."

3. The email acknowledged that the new Title 5 regulations are binding on the District.

4. The email said that the Title 5 regulations require the District to use the DEIA *Competencies and Criteria* issued by the state to develop the District's minimum standards for performance evaluations.

5. The email said that the new DEIA language in the Faculty Contract was incorporated because the Union "and the District were aware the regulations were coming and added language … to address the changes."

6. The email explains that the District will work with the faculty union and the Academic Senates to develop training for faculty to ensure "a uniform understanding of the competencies and criteria, understand the expectations regarding a faculty member's performance related to the competencies and criteria, and have best practices on how to assess that during the evaluation process."

7. The email states that the District has not yet developed the training or updated the performance evaluation forms. It says the District, the Union, and the Academic Senates will meet for the first time in the coming weeks to begin developing the training.

8. Professors who are being evaluated in the Fall 2023 semester are told to just " do their best to speak to how they have demonstrated or shown progress toward practices that embrace the DEIA principles."

9. While I am not up for review in the Fall of 2023, I am up for review in the Spring of 2024. But I do not know what it means to "do [my] best" to embrace DEIA principles and integrate them in my Chemistry classroom, especially in light of my strong objections to mandated concepts like "anti-racism" and "intersectionality."

10. A true and accurate copy of the email that I received is attached as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct.

11. Under the previous Faculty Contract that governed from July 1, 2018, to June 30, 2021, I was expected to show that I was "[r]esponsive to the educational needs of students by exhibiting awareness of and sensitivity to … [d]iversity of cultural backgrounds, gender, age, and lifestyles." However, I was not required to change my teaching to incorporate DEIA principles such as "anti-racism" and "intersectionality."

12. A true and accurate copy of the 2018-2021 Faculty Contract is attached as Exhibit B.

Executed on this 25th day of September 2023.

/s/Bill Blanken
Bill Blanken

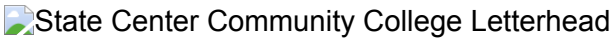
CERTIFICATE OF SERVICE

I, Daniel M. Ortner, hereby certify that on September 25, 2023, I submitted the foregoing to the Clerk of the Court via the District Court's CM/ECF system, and that this document will be served via CM/ECF on all parties.

/s/ Daniel M. Ortner
DANIEL M. ORTNER

EXHIBIT A

From: SCCCD Human Resources <noreply.hr@scccd.edu>
Sent: Tuesday, September 19, 2023 5:13 PM
Subject: DEIA Competencies & Faculty Evaluations [Approved by Vice Chancellor Mosier]



Please do not reply to this email; this address is not monitored.

DEIA Competencies & Faculty Evaluations

As you are all aware, new Title 5 Regulations were approved by the Board of Governors in March 2023, which were effective on April 16, 2023 (see attached). The regulations included a requirement for the California Community College Chancellor's Office ("CCCCO") to adopt and publish guidance describing the DEIA competencies and that those competencies "shall be used as a reference for locally developed minimum standards in community college district performance evaluations." SCFT and the District were aware the regulations were coming and added language to both the FT and PT collective bargaining agreements to address the changes, in anticipation of CCCCO publishing the competencies by the time contract negotiations were settled. The CCCCO emailed the competencies on May 10, 2023.

Per the terms of the negotiation agreement between SCFT and the District, all faculty, full-time and part-time, instructional and non-instructional, must be evaluated on:

> *"Demonstration of, or progress toward, diversity, equity, inclusion and accessibility SCCCD & SCFT Agreement (FT) 2022-2025 37 (DEIA)-related competencies, and teaching and learning practices that reflect DEIA and anti-racist principles, and reflect knowledge of the intersectionality of social identities, illustrate a developing set of skills for effective cross-cultural teaching, and recognize the myriad of ways in which people differ, including the psychological, physical, cognitive, and social differences that occur among individuals, all to improve equitable student outcomes and course completion."*

Additionally, the agreements requires that all faculty in their self-evaluation:

> *"…demonstrate an understanding of diversity, equity, inclusion and accessibility (DEIA) competencies and antiracist principles, and how they have put those principals into practice to improve equitable student outcomes and course completion."*

As part of the negotiated agreement, SCFT and the District agreed to jointly, including members from the Academic Senates at all four Colleges, develop a training for all evaluators and evaluates so that they have a uniform understanding of the competencies and criteria, understand the expectations regarding a faculty member's performance related to the competencies and criteria, and have best practices on how to assess that during the evaluation process.

Given the agreement was not finalized until shortly before the summer break, SCFT, the District and the Senates have not yet been able to meet to develop that training, but will be doing so in the next few weeks. The training will then be offered during the first two weeks of every fall and spring semester. At the same time, SCFT, the District and the Senates will be updating all evaluation forms.

Since the training is not yet available, for Fall 2023 evaluations and self-evaluations, evaluatees should, in good faith, review the language in the contract and do their best to speak to how they have demonstrated or shown progress toward practices that embrace the DEIA principles. Similarly, evaluators should provide feedback to those that they are evaluating, and contact the appropriate administrator or SCFT with any questions.

Questions can be directed to Julianna Mosier, Vice Chancellor, Human Resources, or Keith Ford, SCFT President.

2 attachments

image001.png
37K

Final Regulatory Text - DEIA Evaluation and Tenure Review of District Employees and 399 DOF Signed.pdf
1190K

EXHIBIT B

AGREEMENT BETWEEN

STATE CENTER COMMUNITY COLLEGE DISTRICT

AND

FULL-TIME FACULTY BARGAINING UNIT
STATE CENTER FEDERATION OF TEACHERS
LOCAL 1533, CFT/AFT, AFL-CIO

JULY 1, 2018 – JUNE 30, 2021

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By Article

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ARTICLE I
TERM OF AGREEMENT

This Agreement between the State Center Community College District ("District") and the State Center Federation of Teachers, Local 1533, CFT/AFT, AFL-CIO ("Federation") covering full-time faculty members is effective July 1, 2018 or on the date the Agreement is ratified and approved by both parties, whichever is later, and shall remain in full force and effect through June 30, 2021.

ARTICLE II
RECOGNITION

The District recognizes the Federation as the sole and exclusive representative of those members of the bargaining unit enumerated in the certification of the Educational Employment Relations Board dated March 24, 1977, Case Number S-R-555, as amended, effective May 26, 1981.

Unit composition shall consist of full-time temporary faculty, contract faculty and regular (tenured) faculty including full-time faculty on special assignment with the following exclusions:

A. Employees in positions designated as management by the Board of Trustees, including the Chancellor, Vice Chancellors, Associate Vice Chancellors, College/Campus Presidents, Vice Presidents, Deans, Executive Directors, and Directors.

B. All personnel compensated solely on Salary Schedule C, substitutes, both short-term and long-term.

C. All temporary employees as defined by Education Code sections 87470, 87482, and 87612, except temporary faculty who serve at least seventy-five percent (75%) of the academic year who shall be included in the full-time faculty bargaining unit.

Should the District establish a new position or reclassify an existing position, the District will meet and negotiate whether the position is a bargaining unit position. If the District and Federation cannot agree, the matter shall be referred to the Public Employment Relations Board.

ARTICLE III
EFFECT OF AGREEMENT

It is understood and agreed that the specific provisions contained in this Agreement shall prevail over District practices and procedures and over state laws to the extent permitted by state law, and that District practices, procedures, and policies shall be amended within a reasonable time in accordance with the terms and conditions of this Agreement.

ARTICLE IV
SUPPORT OF AGREEMENT

During the term of this Agreement, the District agrees not to negotiate with any other organization on matters upon which the Federation is the exclusive representative and which are within its scope of representation, nor will the District attempt to negotiate privately or individually with the members of the bargaining unit or any person not officially designated by the Federation as its representative.

The Federation agrees to negotiate only with the representatives officially designated by the District to act on its behalf and agrees neither the Federation, its members, or agents will attempt to negotiate privately or individually with the Board, an individual Board member, or any person not officially designated by the Board as its representative.

ARTICLE V
WAIVER OF BARGAINING

Section l. WAIVER:

A. This Agreement shall constitute the full and complete commitment between both parties and shall supersede all previous agreements between the parties, both oral and written. This Agreement may be altered, changed, added to, deleted from, or modified only through the voluntary, mutual consent of the parties in a written and signed amendment to this Agreement. The Federation acknowledges that during negotiations which preceded this Agreement, (the Federation) had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

B. Except as otherwise specified in this Agreement, including, but not limited to Article XIX, Section 7 "Retiree Medical Insurance" and any article necessary to address a formal recommendation from the accreditation reports, the Federation and the District agree that for the life of this Agreement neither party shall be obligated to negotiate collectively with respect to any subject or matter, and the District and the Federation expressly waive and relinquish the right to bargain collectively on any subject or matter:

1. Whether or not specifically referred to or covered in this Agreement;

2. Even though such subjects or matters may not have been within the knowledge or contemplation of either or both parties at the time they negotiated and signed this Agreement;

3. Even though during negotiations the subjects or matters were proposed and later withdrawn;

Unless there is mutual agreement by both parties to reopen negotiations on those specific subjects or matters.

Section 2. BEGINNING NEGOTIATIONS:

The District and Federation agree that except as expressly set forth herein, including, but not limited to Article XIX, Section 7 "Retiree Medical Insurance" and any article necessary to address a formal recommendation from the accreditation reports, this contract shall not be subject to reopening on any item for the duration of the Agreement or unless mutually agreed to in writing by both parties. Neither party is obligated to agree to reopen this contract except as stated herein, and any agreement to reopen this contract must be signed in writing by the parties. The contract will run through June 30, 2021. Initial proposals for a successor contract shall not be presented earlier than July 1, 2020.

Section 3. REOPENER NEGOTIATIONS:

The parties agree that during the term of this Agreement, Article XIX, Section 7 "Retiree Medical Insurance" may be reopened by either party, upon written notice, for the purposes related to the current Internal Revenue Service (IRS) audit of this benefit and options for restructuring the District's retiree benefits.

For the purpose of addressing a formal accreditation recommendation, during the fiscal year 2018-19 either party may reopen one (1) article contained in the Agreement upon written notice to the other party.

ARTICLE VI
SEVERABILITY AND SAVINGS

If any provision of this Agreement is held invalid by operation of law or by a court or other tribunal of competent jurisdiction, such provision shall be inoperative, but all other provisions shall not be affected thereby and shall continue in full force and effect.

Any such provision held invalid or inoperative shall be renegotiated upon written request of either party to this Agreement.

ARTICLE VII
MAINTENANCE OF OPERATIONS

The Federation agrees that neither the Federation, nor any person officially acting in its behalf, will cause, authorize, engage in, sanction, or, take part in a strike, a concerted failure to report for duty, or other similar action against the District. In consideration thereof, the District agrees there shall be no lockout of unit members.

ARTICLE VIII
PAST PRACTICES

The District is not bound by any past practices of the District or understandings with any employee unless such past practices or understandings are specifically stated in this Agreement.

ARTICLE IX
FEDERATION RIGHTS

Section 1. PUBLIC INFORMATION:

The Federation shall be provided, upon written request, with materials and data that are available to the public. The Federation shall pay reasonable photocopying costs for documents requested pursuant to this section.

Section 2. BOARD POLICIES/ADMINISTRATIVE REGULATIONS:

The District shall provide the Federation with the State Center Community College District Policies and Regulations. During the term of this Agreement, the District shall notify the Federation of any changes, additions, alterations, or deletions to the electronic version of the District policies and regulations, providing that the electronic version is the official set of District policies and regulations. It is understood that said policies and regulations are maintained on the publicly accessible website of the District.

Section 3. NEW EMPLOYEE ORIENTATION:

New Employee Orientation means the onboarding meeting of a newly hired public employee, whether in person, online or through other means or mediums, in which employees are advised of their employment status, rights, benefits, duties and responsibilities, or any other employment related matters.

The District shall provide the Federation access to its new employee orientation meeting, and the Federation shall receive not less than ten (10) days-notice in advance of any District or College new employee orientation meetings.

During new employee orientation, the Federation shall be entitled a five (5) to ten (10) minute period scheduled on the orientation agenda, as well as one (1) thirty (30) minute period for the Federation to meet with new hires, immediately after the orientation meeting set by the District.

The District shall provide the Federation with the numbers of new employees who will be attending the orientation no less than ten (10) business days prior to the orientation, so that the Federation can prepare to provide each new member with information about the Federation and its benefits.

Section 4. EMPLOYEE LISTS:

The District shall provide the Federation with the names, addresses, and telephone numbers of unit members at intervals not to exceed twice per year upon the Federation's written request. Additional newly hired unit members' names, addresses, and telephone numbers shall be furnished as hired during the year. The District is not obliged to release addresses and/or telephone numbers of unit members who have designated in writing to the District that such information remain confidential.

Section 5. FEDERATION OFFICIALS:

The Federation shall furnish annually, and update as required, a list of all officials and representatives authorized to act on the Federation's behalf. The list shall show the name and the title of these officials. The District is obligated to recognize or allow reasonable access to any work location by any Federation official or representative when they appear on the official list submitted, subject to the following limitation:

Authorized Federation officials and representatives shall be allowed work location access to unit members only when unit members are not engaged in classroom or other assigned responsibilities.

Section 6. MAILBOX USAGE:

Duly authorized communications may be placed by the Federation in the mailboxes of unit members. Such communications must be dated and bear Federation identification as the distributor. The Federation agrees to use the District's mail service in compliance with California Education Code section 7054 (Political Activities).

Section 7. BULLETIN BOARD USAGE:

Duly authorized communications may be placed by the Federation on the bulletin boards of each college. Such communications must be dated and bear Federation identification as the distributor. Reasonable space and time limitations may be invoked by the District when necessary.

Section 8. EQUIPMENT USAGE:

The Federation shall pay for its own supplies whenever the use of District equipment is approved for producing Federation materials. The Federation shall pay a reasonable fee for such use. The fee shall be set by the college administration and shall represent the cost to the District, including staff time and maintenance. The District requirements shall, at all times, have priority over that of the Federation.

Section 9. FACILITIES USAGE:

Upon advance request, and with approval, the Federation will be granted the use of facilities, depending upon availability of space.

Section 10. POSTAGE MACHINE:

The Federation shall not be granted the use of the District postage machine.

Section 11. TELEPHONE USAGE:

The Federation shall not cause any long distance telephone or any other charges to be billed to the District.

Section 12. DUES DEDUCTIONS & ORGANIZATIONAL SECURITY:

As a condition of employment, all eligible unit members covered by this Agreement shall execute

a choice to designate for payroll deduction one (1) of the following: (A) Federation membership dues; (B) fair share service fee; or (C) a contribution to a non-religious, non-labor charitable fund under Section 501(c)(3) of Title 26 of the Internal Revenue Code, if he/she qualifies for a religious accommodation. Any dispute over the eligibility of a unit member under (C) shall be resolved at any step in the following procedure: (1) investigation by the Federation; (2) meeting(s) between the Federation and the unit member; and (3) the Grievance Procedure of this Agreement.

A. Organizational Security Through Union Membership and Fair Share

1. Authorization for Deduction of Union Membership Dues and Fair Share Fees:

a. The District will deduct from the pay of each unit member and pay to the Federation the normal and regular monthly Federation membership dues and fair share service fees as voluntarily authorized, in writing, by the unit member or fair share fee payer on the District approved form.

b. The District agrees to deduct dues in uniform amounts from all eligible Federation members and fair share service fee payers within the unit recognized and enumerated in Article II who have signed an authorization card for such deduction (dues/fees checkoff) in a form approved by the District, and subject to the following:

i. Such deduction shall be made only upon the submission on a District approved form of a duly-executed and revocable authorization by the unit member or fair share service fee payer in accordance with provisions outlined in Sections 12(A)(2) and 12(A)(3) below;

ii. The District shall not be obligated to put into effect any new, changed, or discontinued deduction unless the change is in the District payroll office prior to the tenth (10th) of the month;

iii. Dues shall be deducted from warrants for each month of the twelve (12) month fiscal year.

2. Maintenance of Membership for Union Member

Every union member, regardless of authorization date, shall maintain his or her membership in good standing with the Federation including the dues checkoff provision in 12 (A)(1)(a) and 12 (A)(1)(b) above, for the duration of the applicable collective bargaining agreement (CBA). However, any union member has the right to terminate his or her membership within a period of thirty (30) days following the expiration of a written CBA, regardless of whether the Agreement has been extended or superseded. In such case, the member shall become an organizational security fair share fee payer, subject to the provisions of this Agreement, the Federation's procedures, and the law.

3. Maintenance of Membership for Fair Share Service Fee Payer

A fair share service fee covering non-members of the Federation, fair share fee payers, shall remain in effect unless it is rescinded pursuant to the procedures of the Educational Employment Relations Act (EERA), or if held invalid by operation of law or by a court of competent jurisdiction, as provided under Article VI (Severability and Savings) of this Agreement and shall be subject to the grievance and arbitration provisions of this Agreement, except that the arbitration shall be expedited.

B. Notwithstanding any other provision of this Article, any unit member who is a member of a religious body whose traditional tenets or teachings include objections to joining or financially supporting employee organizations shall not be required to join, maintain membership in, or financially support any employee organization as a condition of employment; except that such employee is required, in lieu of payment of dues or service fees to the Federation, to pay sums equal to such service fee to a nonreligious, nonlabor organization, charitable fund exempt from taxation under Section 501(c)(3) of Title 26 of the Internal Revenue Code, and chosen by such employee from the following list of such funds:

1. State Center Community College District Foundation
2. Community Food Bank
3. Marjaree Mason Center

Proof of payment to any fund shall be made by the District on an annual basis to the Federation.

C. The Federation shall indemnify and hold the District harmless for any and all claims, demands, or suits, or other action arising from the organizational security provisions contained herein.

Section 13. FEDERATION/DISTRICT CONSULTATION:

The parties agree that communication involving employer-employee relations, may be facilitated by consultation meetings. Either party may request a consultation meeting where they believe a resolution of a problem or problems may be feasible. The party requesting such a meeting shall, in writing, submit an agenda with sufficient detail to allow an understanding of the problem to be discussed or resolved and the date, place, and time requested. The receiving party shall, within five (5) work days, notify the requesting party of agreement as requested or at another date, time or place mutually agreed upon to the meeting. Meetings shall be held during Federation members' nonworking hours. Neither party shall have more than three (3) representatives at any such meeting unless mutually agreed to prior to the meeting. These meetings are not intended to bypass the Grievance Procedure and shall not constitute any invitation to renegotiate any provisions of the Agreement.

Definition:

Consult shall mean that the District or Federation shall seek advice, opinions, and/or information

from the other party regarding items listed above. The District will give the Federation reasonable time to consider such items.

Section 14. FEDERATION ADVISEMENT:

A. The Federation has the right to consult on the definition of educational objectives, institutional direction or purpose, and the determination of the content of courses and curriculum.

B. To provide for the consultation process, the following channels may be used:

1. The Federation shall have the right to add a representative to the following committees:
   i. Educational Coordinating and Planning (ECPC);
   ii. Equal Employment Opportunity (EEO);
   iii. Curriculum and Instruction.

2. The Federation/District Consultation process (Article IX, Section 13) may be used by either party to discuss the subject areas covered under Section 14A of this article.

3. Other committees to which appointments by the Federation can be made shall be determined only through mutual agreement between the Federation and the College/Campus President.

Section 15. RELEASED TIME:

A. For Federation Officers

1. The District agrees to provide the Federation released time of the equivalent of two (2) FTE for the conduct of Federation activities.

2. Such released time shall be agreed to and scheduled prior to the beginning of each semester according to the following:

   a. A unit member may be released one (1) FTE per year except in cases where the College/Campus President determines that such release would have a significant adverse impact upon a college program.

   b. Such allocation shall be based on whole courses.

   c. Such two (2) FTE released time shall be calculated based on the District load policy.

   d. All released time shall be reimbursed to the District by the Federation based upon Salary Schedule B1 Lecture, Class IV, Step 4.

3. The cost of the one and one-half (1.5) FTE and any additional overages shall be billed to the Federation monthly dues payments by the District at the end of the fiscal year for actual time used. The District shall be responsible for only the amount of up to one-half (0.5) FTE which shall be utilized before the Federation is charged.

4. The Federation will provide the Chief Human Resources Officer with a list of officers and associated released time for the academic year three (3) weeks prior to the beginning of the academic year.

B. For Federation Executive Council Members' or Delegates' Attendance at Conferences and Seminars

1. The District agrees to grant to the Federation Executive Council members or delegates released time for attendance at conferences and seminars pertaining to labor relations activities. No District payment shall be made for travel, rooms, meals or related expenses.

2. Such released time shall be requested to the Chief Human Resources Officer or designee, whenever possible, two (2) weeks or more in advance of such conference or seminar with a copy to the unit member's immediate supervisor;

3. Such released time cumulatively shall not exceed one hundred and fifty (150) teaching hours during any fiscal year, and no one (1) member shall exceed one-fifth of the total days;

4. All such released time over fifty (50) teaching hours shall be reimbursed to the District by the Federation based upon Governing Board Policies, Salary Schedule B1, Class IV, Step 4.

C. For Negotiations

1. A maximum of three (3) (or the same number as the District's team, whichever is greater) authorized unit members of the Federation Bargaining Committee shall be released from their regular work duties, with pay, if negotiation meetings with management are scheduled during the working hours of the unit members involved.

2. The District may, where required, provide substitutes for such classes as may be missed by these three (3) unit members (or the same number as the District's team, whichever is greater).

D. For Member Representation

1. The Federation Vice President for Grievance at each college shall be released from his/her regular work duties, with pay, if grievance resolution meetings are scheduled with management during the working hours of the Federation Vice President involved. The parties shall seek to schedule grievance resolution meetings at times when the Federation Vice President is not assigned to classes.

2. A reasonable number, not exceeding five (5) unit members within the District of the Grievance Committee, shall be released from their regular work duties with pay, when assisting members in grievance resolution meetings which are scheduled with management during the working hours of the Grievance Committee member involved.

ARTICLE X
MANAGEMENT RIGHTS

Section 1.

The Federation recognizes and agrees that the exercise of the express and implied legal powers, rights, duties, and responsibilities by the Board, e.g., the adoption of policies, rules, regulations, and practices in furtherance of these powers, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement.

Section 2.

The Federation recognizes and agrees that the District retains its right to amend, modify, or rescind policies and practices referred to in this Agreement in case of emergency. An "emergency" is considered an Act of God, a natural disaster, or other dire interruption of the District program. Where an emergency is declared, the District shall immediately notify and consult with the Federation. The Federation agrees it will abide by such emergency decisions of the Board during the time of the declared emergency.

Section 3.

The District agrees that in regard to a declared emergency and decisions made therein, the Federation shall have the right to subject such declaration and decisions made therein to the provisions of the Grievance Procedure, Article XX.

ARTICLE XI-A
NONDISCRIMINATION

The Board and the Federation agree to comply with all pertinent provisions of Title VII and Title IX of the United States 1964 Civil Rights Act, as amended in 1972. The Board and the Federation agree expressly not to discriminate illegally against any faculty member on the basis of race, color, creed, national origin, religion, sex, age, political affiliations, marital status, sexual orientation, or physical handicap.

ARTICLE XI-B
SAFETY

Section 1. SAFE EDUCATIONAL AND WORK ENVIRONMENT:

The District shall provide a safe educational and work environment for all students and employees. The District will comply with all workplace health and safety regulations, including the California Occupational Safety and Health Regulations and guidelines of CAL OSHA. The Federation and its unit members may also bring to the attention of the District health, safety, and security guidelines from other regulatory agencies that govern employee health, safety, and security whereupon the District and the Federation will engage in consultation.

Section 2. SAFETY COMMITTEE:

The Districtwide Facilities and Safety Committee (DWFSC), in addition to campus safety committees, will review and may make recommendations in line with established governance processes regarding health, safety, sanitation, and security concerns.

Section 3. REPORTING VIOLATIONS:

A. Unit members are required to report safety concerns that they observe to their supervisor, the DWFSC, the campus safety committee, or the Director of Environmental Health & Safety. Unit members may also submit an online work order for health and safety issues, which will allow the member to track the progress and view the status of any actions taken.

B. When the District receives a written report of unsafe condition which poses a serious and immediate threat to the health or safety of any unit member, the District shall investigate the allegations and take appropriate actions in a timely manner, as required by law.

C. The individual bargaining unit member forwarding a written report of an unsafe condition may request information relating to action(s) taken as a result of his or her report pursuant to the California Public Records Act.

Section 4. SAFETY REPORTS:

Each year the District is required by OSHA to post a summary of work-related injuries/illnesses for the prior year using OSHA Form 300A. Copies are posted at all District sites and may be requested, as required by the California Public Records Act, from the office of the Vice Chancellor, Finance & Administration. The Clery Act requires that the District post an annual security report. This report is available on the homepage of the District and College websites.

ARTICLE XII
HOURS, WORKLOAD, CLASS SIZE

Section 1. WORK WEEK:

All contract/regular and full-time temporary faculty, including special assignment faculty (Article XII Section 1(B)-1(G)), shall provide a full professional work week of forty (40) hours per week.

Of the forty (40) hour work week, an average of five (5) hours per week will be dedicated to extracurricular involvement in district governance and service to the campus and District.

All faculty, both instructional and noninstructional, are responsible for attending meetings, including all meetings called by administration, curriculum, department, faculty, or committee on non-teaching days.

A. Instructional Faculty

1. All full-time instructors shall be assigned the equivalent of fourteen (14) to sixteen (16) lecture hours equivalent (LHE) per week. This range may be extended to twelve (12) to eighteen (18) in individual instances by mutual agreement. Teaching loads shall be balanced over a two (2) semester period to achieve the equivalent of twenty-nine (29) to thirty-one (31) lecture hours per year, with every reasonable effort made to assign thirty (30) LHE per academic year. In the event that an instructor is assigned more than thirty (30) LHE in an academic year the instructor will be paid on Schedule B for LHE's in excess of thirty (30).

    a. Teaching assignments shall be scheduled within a daily span of time of nine (9) hours or less. If deemed appropriate by management, exceptions may be allowed when the canceling of a course(s) in an instructor's assignment makes lengthening the span necessary to provide a full load. All other exceptions may be made only by mutual agreement with the instructor.

    b. Teaching faculty are required to complete at least twenty (20) hours weekly (office hours and student contact hours in lecture or laboratory class).

    c. Instructors may agree to teach classes in addition to their full-time assignment. In such cases, compensation will be in accordance with the salary schedule for full-time faculty overload. Full-time instructors are limited in overload teaching to not more than forty percent (40%) of a full-time assignment per semester. Short-term not-for-credit classes will not count as part of instructor load, but will be limited to forty (40) hours maximum without the College/Campus President's approval.

2. Office Hours:

    a. All instructional faculty are required to hold five (5) office hours per week unless those office hours cause the unit member to exceed twenty-two (22)

contact hours (Schedule A teaching hours plus office hours). In such cases, office hours will be reduced to four (4) hours per week. Contact hours resulting from overload will not be counted towards the total of twenty-two (22) contact hours.

b. At least one (1) office hour shall be scheduled by unit members on days when they do not have classes scheduled on campus. All office hours shall be posted conspicuously for students as well as identified on all course syllabi and the learning management system.

c. Office hours may be scheduled any time beginning two (2) hours before or two (2) hours after the unit member's scheduled classes for the day, except that office hours may not be scheduled before 7:00 AM or after 9:00 PM. Office hours may be scheduled outside of this window with the approval of the appropriate Dean.

The time requirement for office hours shall be calculated the same way that classroom instruction contact hours are calculated. See Table XII.1. The unit member must schedule office hour sessions in blocks corresponding to the allowed session minute blocks shown in the table. The sum of the unit member's scheduled office hours for the week must total at least five (5) (four (4) for unit members under Section (2)(a)) contact hours, with no scheduled office hour session being less than fifty (50) minutes. Exceptions may be approved by the appropriate Dean.

Table XII.1

Office Hour Session Minutes	Equivalent Office Hour Contact Hours	Office Hour Session Minutes	Equivalent Office Hour Contact Hours
50	1.0	185	3.3
65	1.3	190	3.4
70	1.4	195	3.5
75	1.5	200	3.6
80	1.6	205	3.7
85	1.7	210	3.8
90	1.8	215	3.9
95	1.9	230	4.0
110	2.0	245	4.3
125	2.3	250	4.4
130	2.4	255	4.5
135	2.5	260	4.6
140	2.6	265	4.7
145	2.7	270	4.8
150	2.8	275	4.9
155	2.9	290	5.0
170	3.0		

One (1) virtual office hour per week may be performed via an interactive medium which is identified in all course syllabi and on the appropriate learning management system at the start of each term. The day and time of the virtual office hour must be approved in advance by the supervisor. Instructors teaching sections which are more than fifty percent (50%)

online will have one (1) virtual office hour scheduled via an interactive medium, i.e., learning management system, CC Confer. Office/personal conference calls are not acceptable as an "interactive medium". In addition, the unit member will clearly state on the schedule card details of how to contact the unit member during the virtual office hour.

The office hour obligation for instructional faculty, whose teaching assignment has been reduced due to reassigned or released time or a reduced load contract, shall be reduced by the same proportion as the amount of reassigned or released time or reduction in load. The proration for these special assignments will be based on assigned instructional LHE, rounded to the nearest whole or half hour, instead of assigned contact hours as stated below.

Examples: For the purpose of simplifying the computation of the office hour obligation of an instructor with released time, reassigned time or reduction in load, the twenty (20) hour assignment shall be treated as fifteen (15) LHE and five (5) office hours.

1. An instructor with one hundred percent (100%) released or reassigned time, and therefore zero (0) LHE of instructional assignments has no office hour requirement.

2. An instructor with sixty percent (60%) released or reassigned time, and therefore a minimum six (6) LHE of instructional assignments has a two (2) hour office hour requirement computed as (6/15) x 5 = 0.43 x 5 = 2 office hours.

3. An instructor with a fifty percent (50%) reduced load, and therefore a minimum of seven and one-half (7.5) LHE instructional assignments has a 2.5 hour office hour requirement computed as (7.5/15) x 5 – 0.5 x5 = 2.5 office hours.

Unit members may reschedule a scheduled office hour, always being mindful of student needs when rescheduling office hours.

The unit member shall, not later than the day prior, inform his/her immediate supervisor of the need to reschedule the office hour and publish the rescheduled office hour conspicuously as well as notify students through email.

The rescheduling of an office hour may not exceed more than one (1) day in any full five (5) day work week period. Exceptions warranted by special circumstances may be authorized by the unit member's immediate supervisor or his/her designee.

B. Special Assignment: Counselors

1. The basic work year of the counseling staff shall consist of the same number of duty days assigned to the full-time teaching staff.

2. The number of additional days, if any, to be worked by each counselor on an extended- contract basis shall be determined by management after consultation with the counselor.

3. The work week includes thirty-five (35) hours of assigned duty which may include teaching responsibilities, staff development, activities, meetings, faculty consultations, and/or any other professionally related activities as authorized and/or directed by management. Assignments shall be consistent with the approved statements of duties and responsibilities for each position.

4. Counselors who have teaching responsibilities as part of their contract assignments shall have the thirty-five (35) hours of assigned duty time reduced by an average of two (2) hours per week over the period of a semester for each lecture hour equivalent (LHE) taught. (For example, a counselor teaching one (1) section of a one (1) unit Guidance Studies course for two (2) hours a week for a nine (9) week period shall average thirty-three (33) hours per week of other assigned duty time during the semester in addition to his/her teaching assignment.)

5. Duty days and hours shall be assigned by management after consultation between the counselor and the administration with consideration of the unit member's concerns.

C. Special Assignment: Librarians:

1. The basic work year of the library staff shall consist of the same number of duty days assigned to the full-time teaching faculty.

2. The number of additional days, if any, to be worked by each librarian on an extended contract basis shall be determined by management after consultation with the librarian.

3. The work week includes thirty-five (35) hours of assigned duties which may include teaching responsibilities, if assigned, scheduled professional meetings, staff development activities, and/or other professionally related activities as authorized and/or directed by the administration.

4. Librarians who have teaching responsibilities assigned as part of their contract assignments may have thirty-five (35) hours of duty time reduced by an average of two (2) hours per week over the period of a semester for each lecture hour equivalent (LHE) taught. (For example, a librarian teaching one (1) section of a library science course for three (3) hours a week for a semester shall average twenty-nine (29) hours per week of other assigned duty time in addition to his/her teaching assignment.)

5. Duty days and hours shall be assigned by management after consultation between the librarian and the administration with consideration of the unit member's concern.

D. Special Assignment: College Nurses:

1. The basic work year of the college nursing staff shall consist of the same number of duty days assigned to the full-time teaching faculty.

2. The number of additional days, if any, to be worked by each college nurse on an extended contract basis shall be determined by management after consultation with the college nurse.

3. The work week includes thirty-five (35) hours of assigned nursing duties, office hours, scheduled professional meetings, staff development activities, and other appropriate professional activities as authorized and/or directed by management.

4. Duty days and hours shall be assigned by management after consultation with the individual college nurse affected with consideration of the unit member's concern.

E. Special Assignment: Career and Technology Center Non-Credit Programs:

1. The basic work year for the Career and Technology Center instructional staff shall be the same as for other full-time teaching faculty members. The number of additional duty days to be worked on an extended-contract basis shall be determined by management after consultation with the individuals affected.

2. The work week includes thirty-five (35) assigned duty hours which may include instructional activities not to exceed thirty (30) hours per week, and/or any other professionally related activities as authorized and/or directed by management, such as meetings scheduled by the administration, staff development activities, faculty consultations, and student consultations with community agency representatives.

3. Duty days and hours will be assigned by management after consultation with the individual affected, with consideration of the unit member's concerns.

F. Special Assignment: Tutorial Instructors:

1. The basic work year of the Tutorial Center instructional staff shall consist of the same number of duty days assigned to full-time teaching faculty members.

2. The number of additional days, if any, to be worked by tutorial instructional staff members on an extended-contract basis shall be determined by management after consultation with the individual affected.

3. The work week includes thirty-five (35) hours of assigned duty which may include teaching responsibilities, staff development activities, meetings, faculty consultations, and/or any other professionally related activities as authorized and/or directed by management. Assignments shall be consistent with the approved statements of duties and responsibilities for each position.

4. Duty days and hours will be assigned by management after consultation with the individual affected, with consideration of the unit member's concerns.

G. Special Assignment: Academic Coordinators:

1. It is acknowledged by the Federation and the District that academic coordinators are part of the bargaining unit. Academic coordinators are unit members who assist in specific programs but are not considered management employees and perform no significant responsibilities for formulating district policies and administering district programs.

2. The basic work year of the academic coordinators shall consist of the same number of duty days assigned to the full-time teaching faculty.

3. The number of additional days, if any, to be worked by each academic coordinator on an extended-contract basis shall be determined by management after consultation with the coordinator.

4. The work week includes thirty-five (35) hours of assigned duties which may include teaching responsibilities, if assigned, scheduled professional meetings, staff development activities and/or other professionally related activities as authorized and/or directed by the administration.

5. Academic coordinators who have teaching responsibilities assigned as part of their contract assignments may have thirty-five (35) hours of duty time reduced by an average of two (2) hours per week over the period of a semester for each lecture hour equivalent (LHE) taught. (For example, a coordinator teaching one (1) section of a course for three (3) hours a week for a semester shall average twenty-nine (29) hours per week of other assigned duty time in addition to his/her teaching assignment.)

6. Duty days and hours shall be assigned by management after consultation between the academic coordinator and the administration, with consideration of the unit member's concerns.

Section 2. PROFESSIONAL OBLIGATION:

Each faculty member acknowledges that their primary employment obligation is to the District/College and that any part-time employment that a faculty member has outside of the District/College will not interfere or take precedence over an assignment made by the District/College.

Section 3. DISTRICT POLICY:

District policy, practices, and regulations in respect to class size, hours, and workload not specifically modified herein, shall not be changed by the District without agreement with the Federation.

Section 4. NEW PRACTICES:

New practices within the scope of bargaining shall not be initiated which are inconsistent with present District policy, practices, and regulations, or with this Agreement.

Section 5. LECTURE HOUR EQUIVALENTS FOR LARGE GROUP INSTRUCTION:

Lecture hour equivalent (LHE) value for Large Group Instruction classes shall be as follows (to be computed on the first (lst) census week enrollment):

Number of Students	Lecture Hour Equivalents
Normal Class Size ≤ 50	1.0
51 - 65	1.2
66 - 75	1.4
76 - 85	1.5
86 - 100	1.6
101 - 120	1.8
121 - 140	1.9
141 - 175	2.1
176 - 215	2.3
216 - 260	2.5
261 - 310	2.7

The above figures apply to laboratory classes, except that the LHE figures will be multiplied by seventy-five hundredths (0.75).

All sections will be assigned by management, including Large Group Instruction, with the consideration and collaboration with the full-time unit member. By mutual agreement between the unit member and the Vice President of Instruction, factors for lecture hour equivalents for lecture classes may be established by using the number which is the arithmetic mean of the number of students in all classes of the contract load for the instructor, computed on the first (1st) census week enrollment. The first (lst) census week enrollment reflects all new registrations, additions, and drops that are returned to the admissions and records offices by the end of the Friday that precedes Monday of the first (lst) census week; this Friday could be the thirteenth (13th), fourteenth (14th) or fifteenth (15th) day of the semester.

In instances in which a unit member chooses to enroll students that results in a class enrollment that exceeds fifty (50) students at census (LGI), the unit member must get prior approval from his/her Dean in order to be compensated.

Section 6. FACULTY LOAD (LHE) FOR ASSIGNED CLASSES:

All assigned classes which generate FTES shall be included in determining faculty load (LHE); however, LHE will be prorated for those classes to which a unit member is assigned for less than the full duration of the class.

Section 7. CALENDAR:

Duty days shall be one hundred seventy-seven (177) in each academic year for all instructional faculty, including Department Chairs, and one hundred seventy-seven (177) in each fiscal year for

special assignment faculty, which includes Career and Technology Center Noncredit Programs.

Spring Break shall be non-duty days for all instructional faculty.

All unit members shall attend meetings called by the College/Campus President, Vice President, Dean, or department chairperson on duty days prior to the beginning of instruction each semester.

One (1) flexible schedule day shall be provided at the beginning of each semester, unless the District and the Senates mutually agree otherwise. Unit members may request to reschedule a "flex day" at a time other than the date at the beginning of the fall and spring semester(s) for a specific educationally related activity which is beneficial to the education of students, providing such alternate schedule is management approved and within the normal travel and conference budget expenses. Any approved rescheduled "flex day" must occur within the fiscal year (Title 5, Section 55720a) from which it was rescheduled and must be outside of the individual unit member's regular contract and overload teaching schedule as assigned. Weekday evenings and/or weekend days are permissible. Evening and/or weekend assigned time cannot be counted. Unit members scheduling alternate flex day activities are responsible for the reporting requirements required in regulation.

Section 8. LABORATORY HOUR EQUIVALENTS:

The District will assign seventy-five hundredths (0.75) lecture hour to each laboratory class.

Section 9. SPECIAL COURSES:

The Federation recognizes the District's right and responsibility to offer experimental courses. It is understood that sections of such courses may be offered with fewer students required than the normal class size minimum.

It is further understood that such sections as well as courses necessary for students to complete majors and sequences may be offered with fewer students required than the normal class size minimum.

Section 10. CANCELLATION OF COURSES:

All contracts and/or "employment notices" will be approved and mailed to unit members by the Chief Human Resources Officer.

If sections of courses are canceled, it is the District's responsibility to provide a full assignment as defined in Article XII, Section 1.

Section 11. DEPARTMENT CHAIR REASSIGNED TIME:

A. REASSIGNED TIME:

1. Effective with the 2018-19 academic year, unit members who are serving as department chairs shall be given reassigned time per academic year according to the following table based on the FTEF of the previous academic year:

FTEF/year	REASSSIGNED TIME *(in FTE)*
0 < FTEF ≤ 50	0.2
50 < FTEF ≤ 75	0.3
75 < FTEF ≤ 100	0.4
100 < FTEF ≤ 125	0.5
FTEF >125	0.6

For example, consider a department that consists of biology, chemistry, geology and physics. Below is the table of the FTEF for this department.

Discipline	Fall FTEF	Spring FTEF	Total FTEF
Biology	10.5	11.0	21.5
Chemistry	8.0	8.5	16.5
Geology	1.0	1.0	2.0
Physics	5.5	5.5	11.0
TOTAL			51.0

In this example, the department is at fifty-one (51.0) total FTEF, placing this department into the 0.3 Department Chair Reassigned Time category.

2. In cases where the College determines, in its sole discretion, that such reassignment would have a significant adverse impact upon a college program, the department chair will be compensated on Salary Schedule B.

   In such cases, the unit member has the right to refuse the assignment of department chair.

3. The District reserves the right, in its sole discretion, to remove a unit member as department chair at any time.

B. DUTIES:

1. A department chair shall:
   a. Attend and participate in regular and special meetings of department chairs as organized by the Office of the President, Office of Instruction, and/or Office of Student Services, as appropriate.
   b. Assist with the implementation of academic processes and procedures, including course substitution petitions, credit by exam, prerequisite challenges, and academic ("new faculty") position requests.
   c. Act as a liaison between the division Dean and the department faculty.
   d. Assist in the development and continuing review and evaluation of departmental curriculum and programs in collaboration with the department faculty. This includes:

i. coordination of the regular submission of program review reports
    1. In the course of facilitating the completion of program review reports, if the department contains a program that does not have a full-time unit member, the chair shall work with the appropriate Dean to identify a unit member (either full-time or part-time) to develop the report on behalf of the program. The identified unit member shall be compensated for hours spent completing the report up to a maximum of ten (10) hours logged on the appropriate timesheet (Appendix E) at the unit member's Schedule B lab rate. Payment will be made the next pay date after the completed report is submitted.

ii. coordination of the regular assessment, compilation, evaluation, and report of course and program student learning outcomes conducted by all full-time department faculty.

iii. coordination of the review and revision of course outlines at least once every five (5) years.

iv. collaboration with program advisory committees, as appropriate.

e. Chair department meetings on dates and at times not in conflict with any instructional duties of faculty.

f. Prepare and post department meeting agendas and/or notes/minutes to a common repository accessible by all department members.

g. Assist in the coordination of the orientation and evaluation of full-time and part-time unit members in matters related to instruction and institutional practices, protocols, and procedures.

h. Advise unit members regarding the recruitment and evaluation procedures.

i. Coordinate the department response to class schedules recommended by administration.

j. Coordinate department recommendations.

C. Annual Review – The Dean will meet with the department chair at least once each academic year to review the performance of the department chair in his/her duties and responsibilities as department chair. This review will not be a part of the unit member's evaluation process per Article XIII, Section 2, nor will it be included in the unit member's personnel file. This section is not subject to the grievance provisions of this contract.

Section 12. REASSIGNED TIME FOR ACADEMIC SENATE:

A. The District agrees to provide the Academic Senates at each college reassigned time of the equivalent of two (2.0) FTE each for the conduct of academic senate activities as follows: (1) perform academic senate duties and responsibilities, (2) direct, coordinate or participate on academic senate subcommittees or on campus or district committees to which the senate has member appointment rights or programs. Such reassigned time shall be agreed to and scheduled prior to the beginning of each semester.

B. A unit member may be reassigned to perform faculty senate duties described above except

in cases when the College/Campus President determines that such reassigned time would have a significant adverse impact upon the college program. The reassigned time in addition to a unit member's regular assignment shall equal a full-time assignment.

Section 13. ASSIGNMENT:

A. Assignment to more than one (1) location within a college shall be at the discretion of the District and shall take into consideration any aspects related to the assignment, such as necessary travel time between locations. However, unit members, including special assignment faculty, shall be entitled to consultation with the immediate supervisor regarding their assignment.

B. Mileage to multiple locations on the same day shall be paid according to the following formula: (Total round trip mileage) – (Round trip mileage from unit member's home to primary campus)

1. Total round trip is defined as the total mileage from the unit member's home to the first campus, from the first campus to the second campus and from the second campus to the unit member's home.

2. Primary campus is defined as the campus where the majority of the contract load is scheduled or, in the case of nonmajority, the campus where the unit member was hired.

Section 14. DUAL ENROLLMENT LIAISON:

A. Liaisons are defined as State Center Community College District faculty providing Dual Enrollment services.

B. Liaison duties are:

- Inspect facilities (when needed)
- Discussion with the high school teacher regarding the Course Outline of Record and materials
- Classroom visitations
- Evaluation of high school teachers including class assessment

C. Duties of Dual Enrollment Faculty Coordinator or Faculty (not Liaison) are:

- Inspect facilities (when needed)
- Delivery of Course Outline of Record and materials to high school teacher

D. Duties of Management are:

- Collaborate with faculty prior to management determining the selection of courses and sections
- Select the Liaisons

- Select the off-site (high school) instructors
- Decide who will complete facility inspections

E. Priority Order of Selection/Assignment of Liaisons:

- First: offer to full-time, permanent faculty
- Second: offer to full-time, non-tenured/contract (probationary) faculty and full-time categorical/grant funded faculty
- Third: offer to part-time faculty
- If not filled by first, second, or third offers, then assign to qualified faculty in same order as other offers (full-time permanent, then full-time non-tenured/contract (probationary) faculty and full-time categorical/grant funded faculty, then part-time faculty)

F. Department Chairs shall not be required to recruit Liaisons or be requested to perform Liaison duties

G. Liaison Stipend:

- Full-time and part-time faculty Liaisons will be compensated for hours worked up to a maximum of fifteen (15) hours per assignment; however, exceptions can be made to exceed this maximum number of hours with additional compensation to be paid if agreed to by the Liaison and the manager.
- Liaison will submit monthly timesheets for all hours worked pursuant to this Agreement and shall be paid at the Schedule B2 Lab Rate, Class V, Step 5.

Mileage will be compensated based on Section 14(B) of this Article.

ARTICLE XIII
EVALUATION OF FACULTY

Section 1. DEFINITIONS:

A. Contract/Tenure Review (California Education Code Sections 87601, 87602)
B. Regular (Tenured) (California Education Code Sections 87601, 87602)
C. Temporary (California Education Code Sections 87470, 87478, 87480, 87481, 87482)

Section 2. EVALUATION PROCESS:

A. PURPOSE

Contract/Tenure Review - The tenure review process should ensure that students have access to the most knowledgeable, talented, creative, and student-oriented faculty available. A four (4) year probationary period provides sufficient time for academic contract unit members to understand the expectations for tenure, to continue developing skills and acquiring experience to participate successfully in the educational process, and to use the District's and other resources for professional growth. The tenure review process should promote professionalism, enhance academic growth, and evaluate contract unit members relative to continued employment consideration by providing a useful assessment of performance, using clear evaluation criteria.

Regular/Tenured – The purpose of the evaluation procedure of regular (tenured) faculty is to enhance the quality of education, to recognize outstanding performance, to enhance performance and to further the growth and development of faculty members, to identify areas of performance needing improvement and to assist faculty members in achieving improvement, and to maintain the educational quality and standards of the College/District.

B. FREQUENCY

Contract/Tenure Review - Evaluation of contract/tenure review faculty occurs at least once each year during the four (4) year tenure process.

Regular/Tenured – The regular evaluation of tenured faculty shall take place at least once in every three (3) academic years. More frequent evaluation may occur in the event job performance is less than acceptable. The evaluation process will normally be completed within one (1) semester.

C. PROCEDURES

1. Provisions

Contract provisions for the evaluation of the contract academic faculty shall be clarified for tenured faculty and supervisors early in the college year by District and Federation representatives.

2. Committee Composition

Contract/Tenure Review - A contract unit member's evaluation committee shall consist of three (3) members, including two (2) tenured department members (from contract unit member's discipline, whenever possible) and the immediate supervisor (or his/her designee excluded from the bargaining unit. There will not be a designee for the first semester except in an emergency.). If the department of the contract unit member does not have two (2) tenured faculty, division members may be used.

Regular/Tenured – The evaluation team shall consist of a peer reviewer and the immediate supervisor, or his/her designee excluded from the bargaining unit.

3. Committee Member Selection

Contract/Tenure Review - Faculty members shall be drawn randomly by the department chair from the discipline/department pool of volunteers. At a department's discretion, the department chair may serve regularly as one (1) of two (2) faculty members on the committee. At the request of the contract unit member and based on sufficient cause, the committee may be augmented by one (1) member beginning in the second semester of the first year provided there is approval by the District and the Federation. The District and Federation shall receive input from both the contract unit member and the committee.

Regular/Tenured - The peer reviewer shall be a tenured faculty member and should be selected by the immediate supervisor from a list of three (3) names provided and in order of preference by the regular (tenured) faculty member being evaluated from the regular (tenured) faculty member's department or division (with prior approval from the immediate supervisor, the regular (tenured) faculty member may offer one (1) or more names for peer review selection from a different department, division, and/or campus).

4. Confidentiality

Except for persons who are in a need-to-know position, the evaluation process shall be confidential to the extent provided by law. An evaluation committee member may be removed from the committee by the District for a breach of confidentiality, a material breach of the contractual obligations of a committee member or a conflict of interest. The committee member who is removed shall be replaced in the same manner as committee members are selected. This provision is not subject to the grievance procedures. This provision shall be subject to appeal to the College/Campus President who shall render a final decision within five (5) working days.

5. Supervisor's Responsibility

The immediate supervisor or his/her designee excluded from the bargaining unit, shall schedule all committee meetings, secure evaluation-related paperwork, and make sure that all contractual timelines are followed.

6. Steps in the Process - The following steps will occur in the evaluation process:

Contract/Tenure Review Faculty

a. The contract unit member meets with his/her evaluation committee to review the evaluation regulations and criteria, evaluation process and procedures, and timelines. The contract unit member shall be responsible to review the duties and responsibilities for his/her position and, if applicable, the course outlines for that position.

b. Contract unit members will receive a minimum of one (1) classroom visitation (or other appropriate observation for other than classroom instructors) from each member of his/her evaluation committee. The person being evaluated shall be given at least twenty-four (24) hours notice of an intended visitation listing the specific (class) section to be visited where appropriate. The contract unit member shall provide the observer a brief (instructional) plan prior to the visitation.

c. Committee member(s) shall administer a standard District evaluation questionnaire to students in at least one (1) class of each of the contract unit member's preparations. The questionnaire shall be administered at the end of the class session, unless otherwise mutually agreed upon by a committee member and the contract unit member, allowing students a minimum of fifteen (15) minutes to complete the form. The contract unit member shall not be present at the time. (In the event the contract unit member has a non-teaching assignment, the student questionnaire shall be administered to an appropriate number of students associated with the individual's assignment.) For a class taught in Distance Education, the student questionnaire shall be made available to students for a minimum of five (5) days. Standard District evaluation questionnaires for students will be used for (1) face-to-face classes, (2) online/hybrid classes, (3) counselors, (4) librarians, (5) nurses, (6) coaches, and (7) coordinators.

All student questionnaire results shall be made available to the evaluation committee prior to week fourteen (14) (proportionately adjusted for short-term courses) and to the contract unit member upon the completion of the semester. Nothing in these provisions shall preclude student evaluations during any semester, regardless of whether the regular evaluation is being conducted.

d. The committee shall meet to consider all evaluation input ("See Other Evaluation Procedures"), decide on a recommendation regarding subsequent

employment status, and if appropriate, devise a plan for instructional or professional improvement articulated in writing that clearly identifies: (1) areas of deficiency from this article, Section 2(E) and Section 3; (2) objectively observable behaviors to correct areas of deficiency; and (3) a specific timeline to correct areas of deficiency.

e. The committee meets with the contract unit member to discuss the evaluation results, the employment recommendation, and, if appropriate, the plan for improvement to be monitored by the members of the committee. The contract unit member may offer his/her own additional performance assessment to be incorporated into the plan for improvement.

f. A written employment recommendation (based upon the evaluation criteria), along with all pertinent documentation (self-evaluation, summary evaluation, student questionnaires, and classroom visitations and observations, educational discussions, peer review, etc.) shall be submitted by the committee to the College/Campus President through the Vice President of Instruction, Vice President of Student Services, or Vice President of Instruction and Student Services.

g. The College/Campus President shall make a recommendation to the Chancellor and to the Board of Trustees. However, if the College/Campus President does not concur with the evaluation committee's recommendation, he or she will meet with the committee to discuss differences. If the meeting does not produce a concurrence of opinion, both the College/Campus President's and the committee's recommendation shall be forwarded to the Chancellor and Board of Trustees, with the same pertinent documentation that was previously provided to the College/Campus President.

h. For faculty first hired as tenure-track in the spring semester, please refer to Section 4 (A) of this article for the abbreviated evaluation process for that "zero semester."

Regular/Tenured Faculty

a. The evaluation plan shall consist of evaluation procedures and criteria from this article, Sections 2(E) and Section 3 which may include, but are not limited to:

a. educational discussions with peers and/or immediate supervisor
b. classroom visitations and observations
c. video taping of class sessions
d. peer review
e. written and/or oral student evaluations of the unit member
f. appropriate service or activities

b. Student questionnaires are a required part of evaluation, to be administered by an evaluation team member to students in two (2) different courses, or in two (2)

sections of the same course if unit member teaches only one (1) course. All student questionnaire results shall be made available to the evaluation committee prior to week fourteen (14) (proportionately adjusted for short-term courses) and to the regular (tenured) unit member upon the completion of the semester. Nothing in these provisions shall preclude student evaluations during any semester, regardless of whether the regular evaluation is being conducted.

c. Between the 5th and 15th weeks (proportionately adjusted for short-term courses), the evaluation plan is typically carried out and completed.

d. At the completion of the evaluation process, the regular (tenured) faculty member, peer reviewer, and immediate supervisor, or his/her designee excluded from the bargaining unit, shall meet to discuss the results of the evaluation, including the peer written review, student evaluation, regular (tenured) faculty member self-evaluation, and the immediate supervisor's evaluation, as well as suggestions for improving the performance of the regular (tenured) faculty member and, if appropriate, develop a plan for improvement to be monitored by the members of the committee. The plan for improvement shall be articulated in writing that clearly identifies: (1) areas of deficiency from Article XIII Section 2(E) and Section 3; (2) objectively observable behaviors to correct areas of deficiency; and (3) specific timeline to correct areas of deficiency. The regular (tenured) faculty member being evaluated may offer his/her own additional performance assessment to be incorporated into the plan for improvement.

e. The summary written evaluation report shall be prepared by the immediate supervisor, or his/her designee excluded from the bargaining unit. The summary evaluation shall take into account the peer reviewer's written report as well as the results of each of the evaluation procedure and criteria.

f. The unit member shall have the opportunity to comment on the results of the written summary evaluation report and have any written comments attached to the written evaluation report which shall thereafter be forwarded to the College/Campus President through the appropriate Vice President.

D. COMMITTEE COMPENSATION

1. Each faculty committee member shall receive up to five (5) hours or the actual number of logged hours, whichever is less, of compensation equivalent to the top of Schedule B2 Lab rate for each year he or she serves on the evaluation committee and completes the evaluation cycle of a contract/tenure review unit member. To be eligible to receive the compensation, counselors, librarians, college nurses, academic coordinators, and tutorial instructors must perform such evaluation services outside of their regularly assigned work week under Article XII, Section 1. WORK WEEK.

2. Each first year contract/tenure review faculty will have a faculty advisor for the first semester, including zero semester hires, whose function is to serve as a guide to the

institution and its culture, as a teaching resource, and/or as a role model. The advisor will not be a member of the evaluation committee. The process for selecting the faculty advisor will be the same as the process for selecting faculty for the contract/tenure review faculty evaluation committee. The goal of advising is to help new unit members acclimate to the formal and informal norms of the department, college, and the District. Each faculty advisor shall receive up to five (5) hours or the actual number of logged hours, whichever is less, of compensation equivalent to the top of Schedule B2 Lab rate for the first semester of a first year contract/tenure review unit member.

E. OTHER EVALUATION PROCEDURES FOR CONTRACT AND TENURED FACULTY

1. Duties and Responsibilities Evaluation

a. Immediate supervisor or his/her designee excluded from the bargaining unit conducts a "duties and responsibilities evaluation" in accordance with District Policy. The regular (tenured) unit member will be evaluated on professional responsibilities outlined in Administrative Regulation 7122 dated August 18, 2008, including requirements such as holding classes, maintaining roster and attendance records, turning in grades, posting and holding office hours, attending meetings, serving on committees, advising students, and participation in curriculum, program review and annual updates, college and/or district committees and other shared governance activities, and assessing student learning outcomes as a function of the departmental program review process to improve student learning (not to evaluate individual faculty performance).

b. This includes faculty on special assignment. Faculty on special assignment shall also be evaluated on the basis of criteria established in the job description.

2. Records Evaluation

a. Unit member shall submit classroom (or other appropriate) records for evaluation, including syllabi, course objectives for students, tests, grading criteria, counseling processes and forms, etc.

3. Professional Activities Evaluation

a. Unit member shall submit a written record of professionally related activities such as conference/workshop attendance, staff development and participation, institutional/District committee participation, professional association memberships, scholarly publications, research, etc.

4. Self-Evaluation

a. Unit member shall submit to the committee a written evaluation of his/her job performance with respect to the criteria on which he/she is being evaluated.

5. Relevant Input for Outside of Formal Evaluation Process

a. The committee will consider only complaints, concerns, or commendations that have been documented (signed, dated, and presented to the supervisor) and verbal complaints, concerns, or commendations of a consistent, recurring nature that have been previously addressed with the unit member.

b. For Coaches, the immediate supervisor will also consider relevant input from the Athletic Director, regarding items listed in Section (3)(2b) of this Article (Coaches Criteria)

c. The unit member has the right to respond to any complaint or concern which the committee is considering as part of the evaluation process.

6. Computer Proficiency – Additional requirement for contract faculty - No later than completion of the seventh semester in contract status or prior to receiving tenure status, whichever occurs first, contract unit members must be knowledgeable and be able to demonstrate computer proficiencies, including operating a computer, using the storage devices, printer controls, essential operating system commands, browsing the internet, receiving and sending e-mail, and the basic features of word processing and spreadsheet applications. Additionally, the contract unit member will be able to demonstrate proficiency as to particular computer applications designed to meet the needs of students in the unit member's teaching field or other work area, as determined by the evaluation team and department.

Section 3. EVALUATION CRITERIA:

All faculty shall be evaluated based on the following criteria:

1. STUDENTS

a. Responsive to the educational needs of students by exhibiting awareness of and sensitivity to the following:
   i. Diversity of cultural backgrounds, gender, age, and lifestyles;
   ii. Variety of learning styles;
   iii. Student goals and aspirations.
b. Concern for student rights and welfare.
c. Respect for the opinions and concerns of students.
d. Willingness and availability to assist students.

2. PROFESSIONAL RESPONSIBILITIES

a. Participation in departmental, college, or district activities.
b. Maintenance of ethical standards in accordance with American Association of University Professors (AAUP) ethical standards statement (1940; revised 2009)
c. Maintenance of workable relationship with colleagues.
d. Demonstrates commitment to the profession (Code of Ethics).

In addition, unit members shall be evaluated on the following criteria for their primary and/or special assignments:

A. Instructional Faculty – Criteria

a. Knowledge of subject matter.
b. Awareness of current developments and research in field.
c. Demonstration of effective communication with students.
d. Effective use of teaching methods appropriate to subject matter.
e. Institutionally approved course outline.
f. Evidence of course objectives being met through evaluation of student work that measures those objectives, through tests and examinations, written assignments, oral responses, etc.
g. Maintenance of classroom records in accordance with District Policy.
h. Evaluation of student progress in keeping with the course objectives and institutionally adopted course outlines.
i. Participation in curriculum, program review and annual updates, college and/or district committees and other shared governance activities, and assessing student learning outcomes as a function of the departmental program review process to improve student learning (not to evaluate individual faculty performance).

B. Coaches Criteria

In the event all or a portion of an instructor's load is dedicated to coaching responsibilities, observation and evaluation of both classroom and coaching duties must be observed and evaluated, including student evaluations. The criteria to be considered shall be those identified in the "Instructional Faculty – Criteria" of this document and the following:

a. Work through the Athletic Director on all matters pertaining to athletics;
b. Obtain final approval of the Athletic Director of all sports schedules;
c. In accordance with established rules and regulations, recruit athletes within the District by being visible at the district high school campuses and actively recruit on the district high school campuses;
d. Maintain a businesslike working relationship and rapport with campus employees, organizations, district high school coaches, district communities and the various groups within these communities;
e. Maintain appropriate individual and team conduct and discipline;
f. Complete in a timely manner necessary paperwork which serves the function of the program;
g. Assume responsibilities for securing information regarding eligibility of players, as appropriate;
h. Field full and competitive teams; and
i. Assume duties and responsibilities as delegated or assigned by the administration, Athletic Director, or head coach as they relate reasonably to the coaching assignment.

Win-loss record shall not be considered

C. Coordinators Criteria

a. Shall be evaluated on the basis of their duties and job announcement, which is included in their personnel file;
b. Knowledge of the subject matter;
c. Awareness of current developments and research in the field;
d. Demonstration of effective communication with students, faculty, staff and administration;
e. Maintenance of appropriate records; and
f. Participation in curriculum, program review and annual updates, college and/or District committees and other shared governance activities, and assessing student learning outcomes as a function of the departmental program review process to improve student learning (not to evaluate individual faculty performance).

D. Counselors Criteria

a. Evidence of appropriate counseling techniques as designated by review of student educational plans, career test interpretations, etc.;
b. Maintenance of counseling session records in accordance with District Policies;
c. Effective use of counseling methods appropriate to student need;
d. Knowledge of subject matter;
e. Awareness of current developments and research in the field;
f. Demonstration of effective communication with students;
g. Demonstration of respect for all students through the development of a warm and accepting environment;
h. Maintains confidentiality of the counseling session; and
i. Participation in curriculum, program review and annual updates, college and/or District committees and other shared governance activities, and assessing student learning outcomes as a function of the departmental program review process to improve student learning (not to evaluate individual faculty performance).

E. Librarians Criteria

a. Knowledge of library usage;
b. Awareness of current developments and publications in the field;
c. Demonstration of effective communication with students and faculty;
d. Effective use of research methods appropriate to faculty and student needs;
e. Awareness of college curricula;
f. Maintenance of appropriate records; and
g. Participation in curriculum, program review and annual updates, college and/or District committees and other shared governance activities, and assessing student learning outcomes as a function of the departmental program review process to improve student learning (not to evaluate individual faculty performance).

G. Nurses Criteria

a. Knowledge of subject matter;
b. Awareness of current development and research in the field;
c. Effective communication with students;
d. Effective use of nursing procedures;
e. Evidence of appropriate nursing objectives which are met through a student evaluation of services;
f. Appropriate maintenance of student records which protect the confidentiality of all service users;
g. Evaluation of student's progress in keeping current with nursing protocols and public health procedures; and
h. Participation in curriculum, program review and annual updates, college and/or District committees and other shared governance activities, and assessing student learning outcomes as a function of the departmental program review process to improve student learning (not to evaluate individual faculty performance).

Section 4. EVALUATION TIMELINE:

A. Instructional Faculty and Special Assignment Faculty

Contract faculty – the following timeline is repeated in the fall of each year. (Consideration is given for courses scheduled in short-term formats.)

Contract faculty first hired in spring – If a faculty member's service as a probationary faculty member begins during the spring semester, his or her service during that academic year does not count as his or her first contract year for the purposes of tenure review (California Education Code 87605). An abbreviated evaluation will be completed during that spring "zero semester", which will include student questionnaires for all classes, one (1) classroom visitation by the immediate supervisor and one (1) peer reviewer, and a review of the faculty member's class records. The immediate supervisor will then complete a summary evaluation report. Full tenure review committee will not convene until the fall semester.

Regular (Tenured Faculty) - The evaluation team and the regular (tenured) faculty member being evaluated shall follow the timeline or shall endeavor to reach consensus on specific timelines (except as otherwise set forth in the evaluation provisions of this article) for visitation and observations, the administration of student questionnaires, the discussion of the results of the evaluation, and the procedures required in the evaluation process. In the event consensus is not reached regarding the timeline, the immediate supervisor shall determine the timeline to be used.

1. <u>WEEKS 1 – 4 (Proportionately adjusted for short-term courses)</u>

a. Tenure committee established by division Dean;
b. Committee orientation meeting convened by immediate supervisor ,or his/her designee excluded from the bargaining unit, serving on committee;
c. Committee meeting with unit member to discuss evaluation process and timelines;
d. Immediate supervisor, or his/her designee, begins "duties and

responsibilities" evaluation; and

e. unit member submits copies of classroom or other records.

2. WEEKS 5 – 12 (Proportionately adjusted for short-term courses)

a. Classroom visitations, educational discussions, observations of counseling sessions made by committee members;
b. Student questionnaires are administered. Student questionnaire results shall be made available to the evaluation committee prior to week 13 (Proportionately adjusted for short-term courses) and to the contract unit member upon the completion of the semester;
c. unit member submits list of professional activities;
d. Additional visitations may be conducted if deemed necessary by the committee; and
e. Unit member submits self-evaluation.

3. WEEKS 13 – 15 (Proportionately adjusted for short-term courses)

a. Committee meets and reviews all pertinent areas of evaluation and evaluation materials;
b. Committee decides upon employment recommendation for contract unit member and, if the recommendation is a second or third contract, establishes a course of action by which the unit member can improve in areas of weakness; and
c. Peer and supervisor, or his/her designee excluded from the bargaining unit, summarize evaluation findings of regular faculty.

4. WEEKS 16 – 18 (Proportionately adjusted for short-term course)

a. Committee meets with unit member to discuss the employment recommendation. If appropriate, the committee will recommend a course of action for instructional/professional improvement;
b. Committee submits employment recommendation to the College/Campus President, along with copies of all pertinent documents; and
c. This timeline does not preclude a committee member's or administrator's right to visit a unit member's classroom during the subsequent term should such be deemed necessary.

Section 5. RIGHT TO GRIEVE AND RECONSIDERATION:

A. RIGHT TO GRIEVE

1. In the event there is a negative decision made regarding the granting of tenure, that to a reasonable person was unreasonable, or violated, misinterpreted, or misapplied, any policy or procedure concerning the evaluation of a contract (probationary) unit member, the effected contract unit member shall have the right to grieve such negative decision in accordance with the provisions of Education Code section

87610.1.

2. Allegations that the District, in a decision to reappoint a contract (probationary) unit member, violated, misinterpreted, or misapplied any of its policies and procedures concerning the evaluation of contract (probationary) unit member shall be classified and addressed as grievances in accordance with the provisions of Education Code section 87610.1.

B. RECONSIDERATION

In the event the arbitrator rules that the District must reconsider its decision not to grant tenure, the arbitrator's decision and findings of fact shall be served upon the Board of Trustees President or Secretary, along with all evidence, exhibits, documents, and briefs which were provided to the arbitrator. Either party may additionally submit a written argument, stating why the Board of Trustees should or should not grant tenure to the unit member and stating the reasons therefore. Not later than sixty (60) days after having been served the arbitrator's decision, the Board of Trustees shall determine upon reconsideration whether the decision not to grant tenure shall stand, or whether to grant tenure to the contract (probationary) unit member. The decision of the Board of Trustees upon reconsideration shall be final in all respects and served on the unit member.

Section 6. EVALUATION OF TEMPORARY FACULTY:

A. Inclusion in the full-time faculty bargaining unit of temporary faculty who serve at least seventy-five percent (75%) of the academic year will not alter the employees' temporary status. Such employment may be terminated at any time without regard to termination proceedings in this Agreement or with respect to provisions in the Education Code concerning the termination of contract (probationary) or tenured (permanent) unit members.

B. Collective bargaining agreement, Article XIII, Section 2, Section 4, and Section 5 will apply to temporary faculty who serve at least seventy-five percent (75%) of the academic year.

C. The evaluation criteria set forth in the collective bargaining agreement, Article XIII, Sections 2(E) and Section 3 will apply to temporary faculty who serve at least seventy-five percent (75%) of the academic year.

D. The following provisions will apply to the evaluation of temporary faculty who serve at least seventy-five percent (75%) of the academic year:

1. Temporary faculty will be evaluated (at least) as follows:

a. Their performance during their first semester of teaching or service.
b. Their performance during their second and/or third semesters of teaching or service.
c. Their performance over every six (6) semesters of teaching or service

thereafter.

2. The evaluation process of temporary faculty will include the following:

   a. Classroom visitation(s) by peer reviewer and immediate supervisor or his/her designee. Visitation dates and times shall be scheduled within a three (3) week period announced to the temporary faculty member. (Both peer reviewer and evaluator need not be present during a visitation.);
   b. Student questionnaires administered by peer reviewer or immediate supervisor, or his/her designee excluded from the bargaining unit. The student questionnaire results shall be made available to the evaluation committee prior to week fourteen (14) (proportionately adjusted for short-term courses) and to the temporary employee upon completion of the semester.
   c. The results of the evaluation will be discussed with the temporary faculty member;
   d. The unit member shall receive a copy of the final written evaluation;

3. Any violation by the District of procedures contained in this Article shall be grievable. The substance of any evaluation shall not be the subject of any grievance.

ARTICLE XIV
CLASS ADVANCEMENT SALARY SCHEDULE

A. In accordance with salary schedule and unit requirements, the evaluation of requests for class advancement shall be made by the respective college evaluation committee.

1. Each College/Campus President shall designate an administrator, which may be the same as the one (1) serving on the college evaluation committee, who will collect all classification advancement requests before presentation to the committee. This administrator also will have the responsibility of obtaining proper documentation and ensuring that these supportive documents are retained in appropriate college files following committee action.

2. Each college committee shall consist of one (1) administrator from each college (to be appointed by the College/Campus President) and one (1) faculty member from each division at Fresno City College, one (1) faculty member from four (4) different disciplines at Reedley College, and one (1) faculty member from four (4) different disciplines at Clovis Community College. The faculty members shall be selected for the respective college committees by the Academic Senate President at Fresno City College, by the Academic Senate President at Reedley College, and by the Academic Senate President at Clovis Community College. Each committee shall elect a faculty member to serve as chairperson.

B. A unit member anticipating a change in class placement must file a "Letter of Intent" by May 1 of the preceding college year with the administrator designated by the College/Campus President to assist the committee.

C. As proof of completion, official transcripts or other written supporting evidence must be submitted to the designated administrator no later than the Wednesday immediately preceding the first (1st) day of instruction for the year for which the change in salary placement is requested. In the event that the written supporting evidence is not available by the deadline, a notarized statement by the individual concerned on a form provided by the college may be submitted to, and accepted by, the designated administrator on or before the deadline date. However, a subsequent downward adjustment will be made in the unit member's pay sufficient in amount to offset any prior overpayment if the unit member is not able to provide evidence substantiating his/her claim by the first (1st) school day of the second (2nd) full month of instruction of the fall semester. A statement indicating the unit member's knowledge of this downward adjustment provision shall be included on the notarized statement form.

D. Committee recommendations for salary class advancements shall be forwarded to the office of the College/Campus President by Wednesday of the first (1st) week of instruction for his/her review and comment and for filing with the Office of the Chief Human Resources Officer or designee by Wednesday of the second (2nd) week of instruction.

E. All recommendations for salary schedule class advancement must receive final approval from the Chief Human Resources Officer or his/her designee.

F. When a faculty member qualifies for a new class, placement in that class will be without loss of annual increment.

G. Salary Advancement Unit Requirements:

The following regulations pertain to units to be used for class advancement on the academic salary schedule:

1. Units of credit for upper-division and graduate courses from accredited colleges and universities in the unit member's teaching field or other professional assignment may be submitted for a class advancement without obtaining prior approval.

2. Units of credit for upper-division and graduate courses from accredited colleges and universities outside of the unit member's teaching field or other professional assignment submitted for a class advancement must have the prior approval of the campus evaluation committee.

3. Lower-division units:

   a. Lower-division units may be applied to salary class advancement only when prior approval has been obtained and the particular units are one of the following: [1] required for a credential or degree fulfillment, [2] required in connection with preparation for a specific institutional assignment, [3] part of an in-service training program, or [4] recognized by the College Evaluation Committee as contributing to the unit member's effectiveness in his/her assignment.

   b. In order to obtain prior approval for any lower-division course work, each applicant must submit to the College Evaluation Committee the proper application form. Not more than twenty percent (20%) of the units required for advancement from one (1) column to the next may be lower-division units in any case.

4. In addition to total unit requirements, over one-half (1/2) of the total number of units required for placement on a particular salary schedule class must be in the unit member's teaching field or appropriate to his/her professional assignment.

5. Even when they may not carry college credit, National Science Foundation, Industrial Institutes, factory training, and other appropriate courses may be counted for credit for class advancement if, prior to the onset of the course, approval by the College Evaluation Committee has been obtained and the committee has determined how much credit for salary advancement purposes shall be granted. Other than exceptional circumstances, approved in advance by the Chancellor or his/her designee, not more than twenty percent (20%) of the units required for advancement from one column to the next may be units that fit in this category.

Article XV
FACULTY RIGHTS

Section 1. FACULTY RIGHTS:

Individual unit members have the right of consultation with the immediate supervisor on matters relating to the unit members' teaching assignment, instructional program changes, analysis and/or evaluation of instructional programs, and the educational direction of their department and institution.

Section 2. USE OF FACILITIES:

Unit members may use District designated fitness centers at each college during posted hours when the facilities are available to faculty, staff and administrators. Unit members will be required to abide by institutional rules in effect at each campus and to sign a District approved waiver of liability form.

Section 3. COMMENCEMENT ATTIRE:

Academic attire required by the District for unit members to wear at the graduation ceremony shall be provided at District-expense. Academic attire includes cap, gown and hood.

Article XVI
TRANSFER AND REASSIGNMENT

Section 1. VOLUNTARY TRANSFER:

A. A voluntary transfer is initiated by the unit member.

B. Any regular (tenured) unit member may request a transfer from one (l) college to another college where his/her training, experience, skills, degrees and/or credentials coincide with the requirements of a vacant position.

C. Applications for transfer will be considered for vacancies before other outside applicants. The District will post vacancies at District sites as well as on the District website.

D. A regular (tenured) unit member may transfer within the District to a vacant faculty position for which he or she is qualified once all of the following conditions occur and are completely satisfied:

1. Transfer announcements shall be posted for transfer through the District's bulk e-mail for a five (5) calendar-day period.

2. Transfer applicants shall submit to the Human Resources Department a letter containing why they wish to transfer to the posted vacancy and an updated resume, within that five (5) day posting period.

3. The selection committee reviews the request for transfer and makes one (1) of the following recommendations:
   i. recommends to not accept the request for transfer
   ii. requests an interview with the applicant requesting to transfer

4. If an interview is recommended, following the applicant interview and within ten (10) days of receipt of the files from Human Resources, the selection committee shall reach one (1) of the following recommendations regarding the applicants:
   i. acceptance of request to transfer
   ii. rejection of request to transfer

   When the request to transfer is rejected, Human Resources will notify the applicant.

5. If the recommendation is to accept the transfer, the request is forwarded to the College President. The College/Campus President, Vice President and/or designees can interview the candidate.

6. If the College/Campus President does not accept the departmental recommendation, he/she will meet with the department and discuss the reason(s) for not accepting the departmental recommendation.

7. If the College/Campus President accepts the transfer, the candidate is notified by the appropriate administrator and a recommendation is made to the Board of Trustees.

E. Any such transfer shall be considered permanent only upon the completion of each and every condition precedent stated above.

F. The District reserves the right to open to outside applicants any subsequent full-time position resulting from the transfer.

G. Any unit member accepted by another college or center will be permitted to make the transfer when a suitable replacement is found. Any such transfer shall be considered permanent.

Section 2. INVOLUNTARY TRANSFER:

A. An involuntary transfer is initiated by the District, and shall not be done capriciously or as a punitive action.

B. Where the District finds it necessary to transfer a unit member from one (1) college to another, qualified volunteers will be sought. Where there are no qualified volunteers, the District will determine which qualified person is to be transferred.

C. Transferees involuntarily transferred from one (1) college to another to meet District needs shall be returned to the original college, upon request, to fill a vacancy which occurs for which the transferee is deemed qualified.

Section 3. SPLIT ASSIGNMENT:

A. If a split assignment between campuses is made to a unit member and that split assignment requires the unit member to travel to multiple campuses on the same day, the District will pay mileage for the total mileage traveled by the unit member between campuses, less the roundtrip mileage from the unit member's home to the campus of their primary assignment. Primary is defined as the campus where they are assigned the majority of their load. If the load is equally split between two (2) campuses, primary will be defined as the campus where they were hired.

Article XVII
PERSONNEL RECORDS

A. Materials in the personnel file of a unit member which may serve as a basis for affecting the status of his/her employment are to be made available for inspection by the person involved.

B. Every unit member shall have the right to inspect material in his/her personnel file at any time mutually convenient to the unit member and the District. The unit member may be accompanied by a Federation representative, if desired, or a Federation representative may inspect such materials individually at the request of the unit member.

C. Any complaints made by any person directed toward a unit member deemed serious enough to become a matter of formal record, shall be promptly called to the unit member's attention, by copy, and the unit member given an opportunity to respond.

D. A unit member is entitled to know the identity or source of all such complaints. (Any retaliatory action shall be deemed to be unprofessional conduct.)

E. The unit member shall acknowledge that such material has been read by affixing his/her signature and the date on the actual copy to be filed, with the understanding that his/her signature signified only that the material has been read and does not indicate agreement with its contents.

F. Any derogatory material and/or complaint shall not be placed in the unit member's personnel file prior to ten (10) working days from the date it was sent or served. The unit member may respond and have any written response attached to the material and/or complaint to be included in the personnel file.

G. The content of material in personnel files shall not be subject to Article XX, Grievance and Arbitration Procedure of this Agreement.

H. During the ten (10) working day period, the content of material to be added to the personnel files shall be subject to the District Complaint Procedure. (Refer to District Board Policy and Administrative Regulations)

I. The official files for all personnel shall be housed and maintained at the District office, except that files containing official evaluations, job-performance related data, directives, complaints, and other personal communications will be located in the College/Campus President's office.

J. Materials being held out of a personnel file due to a grievance may be submitted as evidence in a punitive action. No other performance evaluation materials outside the personnel file may be used as evidence in a punitive action.

K. Personnel files for academic personnel shall be maintained by the District Office.

L. The following material should be obtained for, and retained in, all academic personnel files located in the District Human Resources Office:

1. Initial employment records

Application
Official transcripts of academic records
Transcript evaluation form
Pre-employment confidential materials, including:
a) Interview reports
b) Placement office papers
c) Letters of recommendation
Verification of related work experience
Copies of credential documents
Academic employment recommendation form
Offer of employment letter
Original signed contracts and employment agreements
Copies of early retirement agreements
Sick leave transfer letters

2. Salary schedule classification advancement information

Petition for advancement
Supportive documents
Action on petition

M. The following materials should be retained in academic personnel files located in the College/Campus President's office:

l. Evaluations and other correspondence related to job performance, including professional growth reports.

2. Directives and other personal communications.

3. Written complaints and commendations.

4. Unit member response to written complaints.

ARTICLE XVIII-A
LEAVES WITH PAY

Section 1. SICK LEAVE PROVISIONS:

A. Sick Leave:

1. Sick leave for a unit member's illness or injury shall be granted to each unit member as follows:

Annual Duty Days	Days of Sick Leave Accrued Annually
220-229	12.0
210-219	11.5
200-209	11.0
190-199	10.5
177-189	10.0

2. Hourly Sick Leave – Unit members assigned overload will accrue sick leave at the rate of one (1) hour earned for each eighteen (18) hours of teaching, counseling, or librarian duties in fall and spring semesters. Overload sick leave does not transfer to STRS for earned service credit upon retirement. This will be referred to as “hourly sick leave”.

3. Earned sick leave which is not used may be accumulated indefinitely from one (1) year of service to the next and may be used as required during such subsequent years of service.

4. One (1) day of sick leave shall be deducted for a day’s absence because of illness or injury.

   If a unit member is absent because of illness or injury for less than a full day, the following chart should be used as a guideline for calculating the sick leave that shall be deducted:

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HOURS OF SCHEDULED DUTIES PER DAY (INCLUDING OFFICE HOURS)													
HOURS ABSENT		1	2	3	4	5	6	7	8	9	10	11	12
	1	1 day	0.5 day	0.34 day	0.25 day	0.19 day	0.16 day	0.16 day	0.13 day	0.13 day	0.09 day	0.09 day	0.09 day
	2		1 day	0.66 day	0.5 day	0.41 day	0.34 day	0.28 day	0.25 day	0.22 day	0.19 day	0.19 day	0.16 day
	3			1 day	0.75 day	0.59 day	0.5 day	0.44 day	0.38 day	0.34 day	0.31 day	0.28 day	0.25 day
	4				1 day	0.81 day	0.66 day	0.56 day	0.5 day	0.44 day	0.38 day	0.38 day	0.34 day
	5					1 day	0.84 day	0.72 day	0.63 day	0.56 day	0.5 day	0.47 day	0.41 day
	6						1 day	0.84 day	0.75 day	0.66 day	0.59 day	0.53 day	0.5 day
	7							1 day	0.88 day	0.78 day	0.69 day	0.63 day	0.59 day
	8								1 day	0.88 day	0.81 day	0.72 day	0.66 day
	9									1 day	0.91 day	0.81 day	0.75 day
	10										1 day	0.91 day	0.84 day
	11											1 day	0.91 day
	12												1 day

For distance education courses, when a substitute is hired to cover an instructor's absence, the instructor's sick leave balance will be reduced by the number of hours (percentage of day) paid to the substitute for covering the absence.

If a unit member was assigned and missed a class that is calculated as an overload assignment due to illness or injury, unit member shall use his/her accumulated Hourly Sick Leave.

Example: Instructor A has three (3) classes and an office hour scheduled on a particular day. The instructor does his/her office hour and two (2) of the scheduled classes, but gets very ill and has to miss his/her third class. Instructor A's contractual obligation for the day was four (4) hours (three (3) one-hour courses and one (1) office hour), and he/she met seventy-five (75%) of that obligation so he/she will report twenty-five hundredths (0.25) days sick time on the Academic Absence Form.

Example: Instructor B has three (3) classes and an office hour scheduled on a particular day. The instructor does his/her office hour and two (2) of the scheduled classes, but gets very ill and has to miss his/her third class. While the first two (2) classes were part of Instructor B's contract load, the third class was a Schedule B overload class. Instructor B's contractual obligation for that day was three (3) hours (two (2), one-hour courses and one (1) office hour), and he/she met one-hundred percent (100%) of that obligation so he/she will not report having missed any workdays on the Academic Absence Form. He/she will, however, need to fill out the Academic Absence Form specific to Schedule B work and will report having missed one (1) hour.

5. At the beginning of each academic year, every unit member shall receive a sick leave allotment credit equal to his/her entitlement for the academic year. A unit member may use this credited sick leave anytime during the academic year.

6. Any unit member who is in paid status while on sick leave, sabbatical, or other paid leave shall continue to earn all leave benefits to which entitled if employed full-time. A unit member who is on a leave of absence without pay shall retain all accumulated sick leave benefits but shall not accrue any additional sick leave benefits during such periods of absence.

7. Where a unit member has exhausted his/her sick leave benefits and is absent from work because of illness or accident, whether or not the absence arises out of or in the course of the employment of the unit member, the unit member shall receive fifty percent (50%) of his/her regular salary during the period of such absence up to a maximum of five (5) school months. This leave is referred to in this Agreement as "extended sick leave".

8. Sick leave credit received by transfer from the previous employer of a new unit member shall be accepted pursuant to the provisions and limitations provided in the Education Code.

   It shall be the responsibility of the unit member to notify the Human Resources Office, in writing, of the name and address of the District by which he/she was last employed and to request credit for the accumulated leave of absence for illness or injury to which he/she is, or was, entitled at the time of separation.

9. All sick leave rights or accumulations shall be canceled when a full-time unit member severs all official connection with the District as an employee, except that accumulated sick leave may be transferred to a subsequent employing district upon request pursuant to the provisions of the Education Code.

10. Any unit member shall have the right to utilize sick leave necessitated by pregnancy, miscarriage, childbirth, and recovery therefrom.

11. A unit member may use his or her sick leave for purposes of parental leave for a period of up to twelve (12) work weeks. The amount of leave, when combined with other leaves under the California Family Rights Act (CFRA), will not exceed twelve (12) work weeks.

    a. Unit members are not required to use sick leave while on parental leave, and may opt to stay in unpaid status. However, unit members are permitted to use sick leave during parental leave. There is no limit on the number of days of sick leave that an unit member may take during parental leave, but the parental leave will not exceed twelve (12) work weeks.

    b. A unit member who takes, and exhausts, all available sick leave while on

parental leave may receive extended sick leave for the remaining portion of the parental leave period. In no event shall the application of paid sick leave and extended sick leave entitle the unit member to additional leave beyond that leave beyond the CFRA leave period.

c. Unit members who are not eligible for CFRA leave, solely because they have not provided at least one thousand, two hundred fifty (1,250) hours of service in the twelve (12) months immediately preceding the request, are eligible to take parenting leave under this Article.

12. Unit members can access a current accounting of his/her accumulated sick leave on the District internet site.

13. Any unit member utilizing sick leave benefits under provisions of this Article shall provide the administration with a signed absence form on his or her first day back to work. After a unit member is absent three (3) or more consecutive duty days, he or she shall provide the administration, upon request, a statement from a health care provider verifying his/her fitness to return to duty. A member absent for more than three (3) duty days shall notify their immediate supervisor of his/her approximate return date.

14. Sick leave may be utilized by any unit member when quarantined by the County Health Officer because of another's illness. Such quarantine must be verified by the County Health Officer.

15. If a unit member has used more sick leave than has been earned or accrued, that deficit, in a dollar amount calculated from the equivalent daily rate for that member, shall be deducted from the next available salary warrant.

B. Catastrophic Leave Bank:

Catastrophic illness or injury is an illness or injury that is expected to incapacitate the unit member or any one (1) of the following individuals for an extended period of time: unit member's parents, spouse/domestic partner, children or other member of the immediate household. Catastrophic illness requires the unit member to take time off from work for an extended period of time to care for that family member, and taking time off work creates a financial hardship for the unit member because he/she has exhausted all of his/her sick leave or other paid time off. Catastrophic illness does NOT include stress-related illness, elective surgery, normal pregnancy, Workers' Compensation claims, disabilities resulting from the current use of alcohol or drugs, intentionally self-inflicted injuries, or normal illness such as colds, flu, allergies, headaches, etc.

In the event of a catastrophic illness or injury, unit members may convert accumulated hourly sick leave to daily sick leave at the rate of one (1) day for every four (4) hours of sick leave earned. This conversion is allowed only after all daily sick leave has been exhausted.

1. The Catastrophic Leave Bank program shall be administered by a District/Federation committee composed of five (5) members: three (3) appointed by the Federation, and two (2) appointed by the District.

2. The Catastrophic Leave Bank program shall continue from year to year.

3. The parties agree that a Catastrophic Leave Bank shall be established to assist unit members who suffer a long-term illness.

4. All unit members may voluntarily participate in the Catastrophic Leave Bank program by:

    a. Contributing one (1) day of sick leave during the first (1st) full month following the signing of this Agreement; or

    b. Contributing one (1) day of sick leave during the first (1st) month of a unit member's employment; or

    c. New participants may annually join the program during the month of September.

5. The District shall contribute one (1) sick leave day for each five (5) days of personal sick leave days contributed by participating unit members.

6. Whenever the Catastrophic Leave Bank becomes depleted, each participating unit member will be taxed a maximum of one (1) additional day per year from his/her accumulated sick leave bank to restock the bank. Sick leave days placed in the bank by participating unit members are irrevocable and:

    a. May not subsequently be withdrawn from the bank except as they are used for sick leave purposes as defined herein;

    b. May not be transferred to another district should that unit member obtain employment elsewhere;

    c. May only be used by participating unit members currently employed by the District;

    d. May not be withdrawn at the time of retirement and may not be used to extend a date of retirement or to receive service credit following a service or disability retirement;

    e. May not be used retroactively for a previous unpaid absence.

    f. No sick leave hours may be transferred or donated to the bank within sixty (60) days of the donor resigning or retiring.

7. A unit member may withdraw from participation in the Catstrophic Leave Bank program at any time by notifying the committee of such withdrawal; however, any days contributed previously may not be withdrawn.

8. Eligibility to use Catastrophic Leave Bank days requires that a participating unit member must have:

   a. Exhausted his/her personal sick leave days as well as all hourly sick accumulated and converted to daily sick leave;

   b. Been incapacitated or absent for no fewer than thirty (30) consecutive calendar days.

9. To apply for Catastrophic Leave Bank usage, the participating unit member must submit the following to the District payroll office:

   a. a written request listing dates of absence to be granted in days from the sick leave bank,
   b. a doctor's note covering the requested dates, and
   c. an absence form(s) for the requested dates.

   The written request along with the supporting documents will be forwarded to the sick leave bank committee chair. Upon receipt, the committee chair will review all documents with the committee. Once a majority agreement has been met by the committee, the chair will notify the payroll department, who will then notify the unit member of the committee's decision.

10. On a one-half (1/2) pay basis only, the Catastrophic Leave Bank may be drawn upon to supplement the fifty percent (50%) pay provision of the District's five (5) school months additional sick leave during the time a unit member is eligible for that provision coverage.

11. There shall be a maximum number of forty (40) withdrawal days per participating unit member per year.

12. A participating unit member using Catastrophic Leave Bank days shall not have to replace those days except as a regular contributing member to the bank.

13. Human Resources will provide the Federation President, upon request, an annual report of the number of days used in the previous academic year as well as the number of days remaining in the bank at the beginning of each academic year.

Section 2. INDUSTRIAL ACCIDENT AND ILLNESS LEAVE:

A. For accidents or illnesses which are industrially-caused, unit members shall be provided leave benefits under the following provisions:

1. Allowable leave shall be sixty (60) days during which the schools of the District are required to be in session or when the unit member would otherwise have been performing work for the District in any one (1) fiscal year for the same accident.

2. Allowable leave shall not be accumulated from year to year.

3. Industrial accident or illness leave shall commence on the first (1st) day of absence.

4. When a unit member is absent from his/her duties due to an industrial accident or illness, he/she shall be paid such portion of the salary due him/her for any month in which the absence occurs as, when added to his/her temporary disability indemnity under Division 4 or Division 4.5 (commencing with Section 6100) of the Labor Code, will result in a payment to him/her of not more than his/her full salary.

   The phrase, "full salary," as utilized in this section shall be computed so that it shall not be less than the unit member's "average weekly earnings" as that phrase is utilized in Section 4453 of the Labor Code. For purposes of this section, however, the maximum and minimum average weekly earnings set forth in Section 4453 of the Labor Code shall otherwise not be deemed applicable.

5. Industrial accident or illness leave shall be reduced by one (1) day for each day of authorized absence regardless of a temporary disability indemnity award.

6. When an industrial accident or illness leave overlaps into the next fiscal year, the unit member shall be entitled only to the amount of unused industrial accident or illness leave due him/her for the same illness or injury.

7. Termination of the industrial accident or illness leave, the unit member shall be entitled to the benefits provided in Education Code Sections 87781 and 87786, and for the purposes of each of these sections his/her absence shall be deemed to have commenced on the date of termination of the industrial accident or illness leave, provided that if the unit member continues to receive temporary disability indemnity, he/she may elect to take as much of his/her accumulated sick leave which, when added to his/her temporary disability indemnity, will result in a payment to him/her of not more than his/her full salary.

   (See Sick Leave, Article XVIII-A, Section 1).

8. During any paid leave of absence, the unit member will endorse to the District the temporary disability indemnity checks received due to of his/her industrial accident or illness. The District, in turn, shall issue the unit member appropriate salary warrants for payment of the unit member’s salary, and shall deduct normal retirement, other authorized contributions, and the temporary disability indemnity, if any, actually covered by such salary warrants.

9. When all available leaves of absence have been exhausted and the unit member is not medically able to return to all the duties of his/her prior assignment, the District

will meet with the unit member to discuss accommodations as required by state and federal law. If the District cannot provide a reasonable accommodation, the unit member will be separated from the District.

Section 3. BEREAVEMENT LEAVE:

A. Unit members may be granted, without loss of salary, or other benefits, a leave of absence not to exceed three (3) working days (five (5) working days if out-of-state travel is required) per occurrence due to the death of his/her immediate family. Bereavement Leave may be extended through the use of "Personal Necessity Charged to Sick Leave," Article XVIII-A, Section 5.

B. ”Member of the immediate family,” as used in this section, includes any of the following:

- Mother
- Father
- Sibling
- Grandmother
- Grandfather
- Grandchild
- Child
- Step-parents
- Step-children
- In-law
- Spouse or domestic partner and any of the aforementioned relations to the spouse or domestic partner
- Any relative living in the immediate household of the unit member

C. An extension of Bereavement Leave may be requested by the unit member. The District will make a determination on such requests in its sole discretion. Such extension shall be without salary for the period of time covered by the extension.

D. A Bereavement Leave of one (1) day per occurrence may be granted, without loss of salary, due to of the death of any close friend not included as a "member of the immediate family" where the unit member has responsibility for carrying out personal business and funeral arrangements attendant to the death.

E. Bereavement Leave may be granted, without loss of salary for the time necessary to attend the funeral of a district colleague conditioned upon the following:

1. The unit member receives written permission from the appropriate Vice President or his/her designee;

2. The unit member's absence does not result in the unit member being unavailable to teach any assigned class unless such unavailability is made unavoidable by the date and time scheduled for the funeral;

3. Written application shall be made to the appropriate Vice President or his/her designee NOT later than two (2) working days in advance of the date and time for leave unless special circumstances necessitate a later application.

F. Bereavement Leave must be taken within six (6) months of the death of the family member.

Section 4. JURY DUTY LEAVE:

A. When called for jury duty in the manner provided by law, a unit member shall be granted a leave of absence without loss of pay for the time he/she is required to perform jury duty during the unit member's regularly assigned working hours.

B. Requests for jury service leave should be made by presenting the official court summons to jury service as soon as possible to the unit member's immediate supervisor and to the District payroll office through regular administrative channels.

C. Reimbursement to the District of any monies earned as a juror, except mileage, shall be made by the unit member.

D. A unit member called for jury duty shall not be encouraged in any way to seek exemption from such duty nor shall he/she be discriminated against in any way for not seeking such exemption.

E. Unit members are required to return to work during any day in which jury duty services are not required.

F. The District may require verification of jury duty time prior to, or subsequent to, providing jury duty compensation.

Section 5. PERSONAL NECESSITY CHARGED TO SICK LEAVE:

All unit members entitled to sick leave benefits have the right to elect Personal Necessity Leave to be charged against their unused sick leave.

Personal Necessity Leave may be used for the following reasons:

A. The death of a member of the unit member’s immediate family (as defined in Section (3)(B) of this Article) when the number of days of absence exceeds the limit provided in Section (1)(B)(6) of this Article.

B. Serious illness of a member of his/her “immediate family” as defined in Section (3)(B) of this Article.

C. An accident involving his/her person or property or the person or property of a member of his/her immediate family. Such accident must be (a) serious in nature, (b) involve a circumstance the unit member cannot reasonably be expected to disregard, (c) require the

attention of the unit member during assigned hours of service, and (d) cannot be attended to during non-duty hours.

D. Appearance in court as a litigant or as a witness under an official order.

E. The birth of a child making it necessary for a unit member who is the parent of the child to be absent from his/her position during his assigned hours of service.

F. Imminent danger to the home of a unit member occasioned by a factor such as flood or fire, serious in nature, which under the circumstance the unit member cannot reasonably be expected to disregard, and which requires the attention of the unit member during assigned hours of service.

G. Personal necessity leave shall be subject to the following limits and conditions:

1. The total number of days allowed in one (1) fiscal year from such leave or leaves shall not exceed six (6) days.

2. Personal necessity leave claimed against accrued sick leave must be so designated on absence and time reports, but reasons for such leave are not required.

Two (2) of the six (6) days may be granted for any reason deemed appropriate by the unit member and with prior approval of the supervisor, and in no case will there be more than two (2) unit members off at any one (1) time in any work unit under this paragraph.

Section 6. SABBATICAL LEAVE:

A. Sabbatical leaves shall be granted to unit members, under provisions of the Education Code, for the purpose of carrying out an approved program which will enable the unit member to provide improved service to the District and its students. Consideration will be given to programs which involve an appropriate program of organized study, research, or travel.

B. Sabbatical leave application, processing, approval, and compensation for unit members shall be in accordance with the following provisions:

1. Unit members may apply for a sabbatical leave during their sixth consecutive year of full-time service, or during their sixth consecutive year of full-time service following a sabbatical leave, such that the unit member will have completed six (6) consecutive years of full-time service by the beginning of his or her sabbatical leave. After completing a sabbatical leave, a unit member is not again eligible to apply for such leave until he/she has served on a full-time basis for at least six (6) additional consecutive years. A leave for health, maternity, military service, or professional improvement, while not constituting a break in continuity of service, will not count as one of the six (6) years required for sabbatical eligibility.

2. Subject to the availability of funds, the District will allocate sabbatical leaves for up to a maximum of twelve (12) of the eligible unit members. Apportionment of sabbatical leaves between the District colleges shall be as follows: the number of leaves assigned to Fresno City College, Reedley College and Clovis Community College shall be based upon the ratio of full-time unit members at Fresno City College, Reedley College and Clovis Community College to the total of all faculty employed by the State Center Community College District.

3. If an insufficient number of candidates apply, or if an insufficient number of applications are recommended by the committee for sabbatical leave as having met the written criteria for sabbatical leave consideration, the application period will be extended for an additional three (3) weeks. All faculty shall be notified of the extension and reasons for such. If, after the extension an insufficient number still fails to meet the minimum written qualifications, the College/Campus President may recommend fewer leaves than that number allocated to the college.

4. Leaves granted will be distributed among the various divisions of a college so as not to impair the instructional program.

5. The unit member applying for a sabbatical leave will agree to serve the District for at least two (2) years immediately following completion of the leave. Prior to entering upon a sabbatical leave the unit member may choose one of two methods of compensation. Under Option I, the unit member must file a suitable bond indemnifying the District for any salary paid to the unit member during the period of sabbatical leave in the event said unit member fails to return and to render two (2) full years of service in the District following the completion of the sabbatical leave. Under Option II, the unit member may enter into a written agreement with the District to fulfill the obligations of the leave in lieu of filing a bond for this purpose, as set forth in Option I. Such an agreement form is available in the Office of Human Resources. The unit member is expected to complete his or her sabbatical leave as indicated in his or her approved sabbatical leave proposal.

6. Each unit member applying for sabbatical leave shall submit a formal standardized application to the appropriate committee for sabbatical leaves prior to November 1 of the academic year preceding the academic year of the proposed leave. The committee at each college shall consist of the Vice President of Instruction, acting as chairperson, all division Deans or those in comparable positions, and an equal number of faculty members appointed by the President of the Academic Senate.

    a. The Vice President of Student Services will serve as an ex-officio member when considering applications from the counseling student services area.

    b. The committee at each institution shall provide the College/Campus President with a recommended rank order of leave applications which shall be submitted to the Chancellor, along with the College/Campus President's recommendations, if any, for subsequent presentation to the Board of Trustees.

c. Applications submitted after the deadline date will be given consideration when accompanied by valid reasons. Valid reasons normally will be limited to government, professional, or academic programs which became available after the deadline date.

7. Within one (1) semester after return to duty, a unit member who has completed a sabbatical leave will submit to the committee for sabbatical leaves and for distribution among faculty, a written report covering the period of the sabbatical. When applicable, a transcript or other evidence of completion of the planned program will accompany this report. A copy of each sabbatical leave report, together with the committee's evaluation, shall be forwarded through the College/Campus President's office to the Chancellor not later than one (1) semester after return to duty.

   If the committee's evaluation reflects that the sabbatical leave report is unacceptable and/or the terms and conditions of the sabbatical were not fully met, the unit member has one (1) additional semester to rectify the problem. If the evaluation remains "unacceptable" at the conclusion of the semester, the District has the right to reclaim, through automatic payroll deduction, from the unit member that percentage of the sabbatical stipend that in the committee's viewpoint reflects the unit member's degree of incompletion.

8. Compensation while on sabbatical leave will be computed in accordance with the salary schedule in effect during the period of leave and will be paid in equal monthly payments. A sabbatical leave will be counted as service and experience on the salary schedule.

9. Sabbatical leaves may be granted as follows:

   a. One (1) semester at one hundred percent (100%) of full salary, or

   b. One (1) full academic year at sixty-five percent (65%) of full salary, or

10. Unit members on a full-year sabbatical may work for outside employers (or themselves) and receive remuneration, so long as the combined income from the District's sixty-five percent (65%) salary payment and the outside remuneration does not exceed one-hundred percent (100%) of what the unit member would receive on the regular faculty salary schedule. A proof of income statement completed and notarized by a Certified Public Accountant (CPA) is required to verify the unit member’s income. Any excess amounts shall adjust the District's sixty-five percent (65%) salary payment downward to maintain the one-hundred percent (100%) salary figure. Outside income that a unit member previously and regularly received during a school year is not affected by the provisions of this section, which apply only to additional employment that a unit member secures during the sabbatical year. Income that a unit member may receive from an employer as a part of his or her sabbatical leave also is not affected by the provisions of this section. Unit members, on a one (1) semester leave, upon approval may work for outside employers and receive

remuneration if the income was previously and regularly received during the prior two (2) school years. Additional employment must receive prior approval from the Sabbatical Leave Committee.

11. The District shall maintain full health and welfare benefits for the unit member on leave to the same extent as if the unit member were working in his/her regular assignment. Sabbatical leave will not count as a break in service for retiree health benefits. District paid health and welfare benefits shall end if the unit member receives reasonably comparable health and welfare benefits (including dependent coverage) from any other employer.

12. Time on sabbatical leave will count towards retirement. Retirement contributions shall be made on the basis of the sabbatical leave compensation (one-hundred percent (100%) for one (1) semester sabbaticals and seventy-five (65%) for one (1) year sabbaticals) and provisions of the State Teacher's Retirement System (STRS). The unit member on a one (1) year sabbatical may elect to contribute to the one-hundred percent (100%) level through STRS.

13. Unit members on sabbatical leave may not perform any work for the District during the sabbatical period. This includes, but is not limited to teaching, service on committees, including search committees, grant work, etc., but may teach during the summer session. Cases in which exceptions may be made shall be in the interest of the instructional needs of the District as determined by the College/Campus President. Paid sick leave is not earned during this period.

    a. Acceptance of a request to work for the District while on sabbatical leave is voluntary.
    b. Faculty who are asked by management to perform work for the District during sabbatical leave will receive additional compensation at the unit member's applicable Schedule B hourly rate.

Section 7. GRANT LEAVE:

A. A grant leave is a leave to permit a regular faculty member to accept a grant to teach, lecture, or do research for a public or private institution or a city, county, state, federal, or foreign government. Such service should result in the unit member's rendering more effective service to the District upon return.

B. Leave may be granted for a maximum of one (1) year.

C. District may compensate unit member on leave by paying the difference between the amount of the grant and the unit member's regular salary.

D. District shall pay retirement benefits and health and welfare benefits for the unit member on leave to the same extent as if the unit member were working in his/her regular assignment. District-sponsored health and welfare benefits shall end if the unit member receives reasonably comparable health and welfare benefits (including dependent

coverage) from any other employer.

E. All unit members who have satisfactorily completed six (6) consecutive years of full-time service in this District will be eligible to apply for a grant leave. A leave for health, maternity, military service, or professional improvement, while not constituting a break in continuity of service, will not count as one of the six (6) years required for grant leave eligibility.

F. The unit member applying for a grant leave will agree to serve the District for at least twice the time approved for the grant leave immediately following completion of the leave. Prior to entering upon a grant leave, the unit member may choose one of two methods of compensation. Under Option I, the unit member must file a suitable bond indemnifying the District for any salary paid to the unit member during the period of grant leave in the event said unit member fails to return and to render twice the time approved for the grant leave in the District following the completion of the grant leave. Under Option II, the unit member may enter into a written agreement with the District to fulfill the obligations of the leave in lieu of filing a bond for this purpose, as set forth in Option I. Such an agreement form is available in the Office of Human Resources.

G. Eligibility:

1. The unit member shall submit to the College/Campus President a request for Grant Leave;

2. The request shall be submitted at least one (1) semester prior to the semester in which the leave is granted;

3. The College/Campus President shall consider the Grant Leave request on the basis of enhancing the unit member's professional growth;

4. The District contributions toward the unit member's regular salary shall not exceed twenty (20) percent;

5. Unit members on Grant Leave shall not exceed three (3) at Fresno City College, one (1) at Reedley College and one (1) at Clovis Community College;

6. The College/Campus President shall forward the Grant Leave request to the Board of Trustees with a recommendation.

ARTICLE XVIII-B
LEAVES WITHOUT PAY

Section 1. PERSONAL BUSINESS LEAVE:

A. The College/Campus President, upon request and with prior approval, may, in his or her sole discretion, grant an absence for Personal Business Leave to a unit member.

B. Absences for Personal Business Leave shall be without pay unless the unit member elects to have such days of absence deducted from his/her accumulated sick leave Any District-sponsored group health insurance, including life insurance and long-term disability insurance, shall not continue through the District while the unit member is on unpaid Personal Business Leave. The unit member may elect to continue coverage as afforded through COBRA for the group health plans, or through the insurance carrier for life insurance. The long-term disability insurance is not eligible for continuance at the employee cost. Upon return from this leave, the unit member will be reinstated to all group and welfare benefits in accordance with eligibility rules. Any voluntary deductions the unit member may have, may be continued at the expense of the unit member.

C. In the event the unit member elects to have the absence deducted from sick leave, he/she may do so up to a maximum of two (2) accumulated sick leave days per college year for reasons of personal business.

Section 2. PROFESSIONAL IMPROVEMENT LEAVE:

A. Any unit member, after four (4) years of successful service to the District, may, upon request and approval, be granted a leave of absence for up to one (1) year. Upon application, one (1) additional year of Professional Improvement Leave may be granted, subject to determination of benefit to the District and Board approval.

B. The unit member, upon returning from leave, shall be placed on the step of the salary schedule that he/she would have attained had he/she been continuously employed by the District during such absence.

C. There shall be no loss of seniority, tenure, break in service, or other rights available under law because of such leave of absence.

D. Requests for Professional Improvement Leave shall be submitted no later than the beginning of the semester preceding the semester of requested leave.

E. A Professional Improvement Leave of less than one (1) year may be granted, but not less than one (1) full semester.

F. Any District-sponsored group health insurance, including life insurance and long-term disability insurance, shall not continue through the District while the unit member is on Professional Improvement Leave. The unit member may elect to continue coverage as afforded through COBRA for the group health plans, or through the insurance carrier for

life insurance. The long-term disability insurance is not eligible for continuance at the employee cost. Upon return from this leave, the unit member will be reinstated to all group and welfare benefits in accordance with eligibility rules. Any voluntary deductions the unit member may have, may be continued at the expense of the unit member, with the carrier's approval.

Section 3. PUBLIC OFFICE LEAVE:

A. Any unit member elected to public office shall be granted a leave of absence without pay for the duration of his/her elected term of office, if requested by the unit member.

B. The unit member must resume his/her full duties within six (6) months after his/her term of office expires.

C. Compensation for part-time service by a unit member on Public Office Leave shall be on a pro rata basis of the unit member's full-time salary.

D. The period of time away on Public Office Leave shall be counted as years of experience toward total years of service.

E. Unless otherwise agreed to, a unit member, upon completion of his/her term of office, shall be reinstated to a comparable position to the one he/she held prior to his/her election.

F. Any District-sponsored group health insurance, including life insurance and long-term disability insurance, shall not continue through the District while the unit member is on Public Office Leave. The unit member may elect to continue coverage as afforded through COBRA for the group health plans, or through the insurance carrier for life insurance. The long-term disability insurance is not eligible for continuance at the employee cost. Upon return from this leave, the unit member will be reinstated to all group and welfare benefits in accordance with eligibility rules. Any voluntary deductions the unit member may have, may be continued at the expense of the unit member, with the carrier's approval.

Section 4. HEALTH LEAVE:

A. Any unit member may, with approval of the College/Campus President and at the discretion of the Board, be granted a leave of absence for health reasons for a period of time not to exceed one (1) year. Such leave shall be without pay and retirement benefits.

B. Certification of the need, or proof of illness, for such leave, acceptable to the District, must be provided by the unit member's health care provider.

C. Any such leave shall not be counted as experience on the salary schedule, nor shall it be counted in determining other benefits such as sick leave or sabbatical leave eligibility.

D. Any such leave granted, however, shall not count as a break in continuity of service to the District.

E. The District agrees to pay the District insurance contribution when a unit member is on a health leave.

Section 5. PERSONAL AND PARENTAL LEAVE:

A. Any unit member may, with approval of the College/Campus President, be granted a leave, in addition to the leave provided in Article XVII, Section 1 (A)(11) above, for a specific reason deemed appropriate including leave to care for a child, at the convenience of the District.

B. Any District-sponsored group health insurance, including life insurance and long-term disability insurance, shall not continue through the District while the unit member is on Personal and Parental Leave. The unit member may elect to continue coverage as afforded through COBRA for the group health plans, or through the insurance carrier for life insurance. The long-term disability insurance is not eligible for continuance at the employee cost. Upon return from this leave, the unit member will be reinstated to all group and welfare benefits in accordance with eligibility rules. Any voluntary deductions the unit member may have, may be continued at the expense of the unit member, with the carrier's approval.

C. Any such leave requires Board approval prior to taking such leave.

D. There shall be no loss of seniority, tenure, or other rights available under law because of such leave.

ARTICLE XVIII-C
OTHER LEAVE

Section 1. MILITARY LEAVE:

Unit members shall be granted military leave in accordance with the provisions of the State of California Education Code and of the Military and Veterans Code.

ARTICLE XIX
INSURANCE PROGRAMS

Section 1. MEDICAL INSURANCE:

A. The District shall provide District-sponsored group medical insurance plan coverage for eligible unit members and their eligible dependents, conditioned upon the provisions of this Article. The District's contribution to the premium is set forth in Section (1)(B) of this Article.

B. District-sponsored group medical plan insurance coverage shall remain in effect during approved leaves, providing unit members pay, in accordance with insurance carrier requirements, District and unit member premium contributions, except as otherwise provided. Failure to pay required premium shall result in termination of coverage.

The District contribution shall be one thousand, twenty-nine dollars ($1,029.00) per month per eligible unit member. The unit member shall pay the difference between the District contribution and the cost of any premium in excess of the District contribution for any selected medical plan.

C. Any District-sponsored group medical insurance plan(s) offered to unit members shall first be mutually agreed to by the District and the Federation.

1. Unit members and their eligible dependents shall become eligible for medical insurance benefits on the first of the month following date of hire, upon prior completion of enrollment requirements.

2. Eligible unit members are required to enroll in a District-sponsored group medical insurance plan according to EdCare Joint Powers Agreement and insurance carrier requirements. If an eligible member fails to submit enrollment forms to the District Benefits Office within thirty-one (31) calendar days from the date of hire, which includes the date of hire, the District will automatically enroll the unit member into the lowest cost plan option for the District. The unit member will be responsible for any portion of the premium in excess of the District's contribution for the medical plan.

Section 2. DENTAL INSURANCE:

A. The District shall provide a District-sponsored group dental insurance coverage for eligible unit members and their eligible dependents.

B. The District will contribute a premium amount equivalent to the premium cost of the dental PPO network plan.

C. District-sponsored group dental insurance coverage shall remain in effect during approved leaves, providing unit members pay, in accordance with insurance carrier requirements, District and unit member premium contributions, except as otherwise provided. Failure to

pay required premium shall result in termination of coverage.

D. Unit members and their eligible dependents shall become eligible for District-sponsored group dental insurance benefits on the first of the month following date of hire, upon prior completion of enrollment requirements.

E. Eligible unit members are required to enroll in District-sponsored group dental insurance coverage according to EdCare Joint Powers Agreement and insurance carrier requirements. If an eligible unit member fails to submit enrollment forms to the District Benefits Office within thirty-one (31) calendar days from the date of hire, which includes the date of hire, the District will automatically enroll the unit member into the dental plan option.

Section 3. VISION INSURANCE:

A. The District shall provide District-sponsored group vision insurance coverage for eligible unit members and their eligible dependents.

B. The District will contribute a premium amount equivalent to the premium cost of the vision plan.

C. District-sponsored group vision insurance coverage shall remain in effect during approved unpaid leaves, providing unit members pay, in accordance with insurance carrier requirements, District and unit member premium contributions, except as otherwise provided. Failure to pay required premium shall result in termination of coverage.

D. Unit members and their eligible dependents shall become eligible for District-sponsored group vision insurance coverage on the first of the month following date of hire, upon prior completion of enrollment requirements.

E. Eligible unit members are required to enroll in District-sponsored group vision insurance coverage according to EdCare Joint Powers Agreement and insurance carrier requirements. If an eligible unit member fails to submit enrollment forms to the District Benefits Office within thirty-one (31) calendar days from the date of hire, which includes the date of hire, the District will automatically enroll the unit member into the vision plan option.

Section 4. LONG TERM DISABILITY INSURANCE (LTD):

A. The District shall provide long-term disability insurance coverage options for eligible unit members.

B. Eligible unit members have the following long-term disability insurance coverage options depending on their date of hire:

1. **Option 1 (Unit members hired on or before August 31, 2013)**:
For eligible unit members hired into full-time benefited positions on or before August 31, 2013, the District shall provide, at the District's expense, long-term disability insurance coverage. If the unit member separates employment from the

full-time benefited position, the LTD benefit under this section will be lost. If the unit member is rehired into a full-time benefited position at a later date, he/she will be eligible to purchase a voluntary long-term disability plan as noted in Option 2. Additional supplemental voluntary long-term disability insurance coverage shall be available to purchase at the unit member's expense during open enrollment, per the requirements of the carrier.

2. **Option 2 (Unit members hired on or after September 1, 2013)**:
For eligible unit members hired into full-time benefited positions on or after September 1, 2013, the District shall provide, at the unit member's expense, voluntary, long-term disability insurance coverage.

C. Long-term disability insurance coverage shall remain in effect during approved unpaid leaves, providing unit members pay, in accordance with insurance carrier requirements, District and unit member premium contributions except as otherwise provided. Failure to pay required premium shall result in termination of coverage.

D. Unit members may refer to the plan document for their applicable policy to determine coverage as provided by the carrier.

E. Should an eligible unit member be deemed disabled and approved for LTD benefits by the insurance carrier, the unit member may receive up to sixty percent (60%) of his/her current monthly salary with a maximum payout of five thousand dollars ($5,000.00) per month.

Section 5. LIFE INSURANCE:

A. The District shall provide a District-sponsored group term life insurance coverage for eligible unit members and their eligible dependents. The amount shall be fifty thousand dollars ($50,000.00) level term for the unit member plus five thousand dollars ($5,000.00) for dependent coverage. The dependent must be enrolled on the unit member's medical insurance plan.

B. District-sponsored group term life insurance coverage shall remain in effect during approved unpaid leaves, providing unit members pay, in accordance with insurance carrier requirements, District and unit member premium contributions, except as otherwise provided. Failure to pay required premium shall result in termination of coverage.

C. Unit members and their eligible dependents shall become eligible for District-sponsored group term life insurance benefits on the first of the month following date of hire, upon prior completion of enrollment requirements.

Section 6. INSURANCE PREMIUMS:

The District shall pay one hundred percent (100%) of the premium for coverage listed in Section 2 (Dental Insurance), 3 (Vision Insurance), 4, B1. (LTD for unit members hired before August 31, 2013), and 5 (Life Insurance).

Section 7. RETIREE MEDICAL INSURANCE:

A. The retiree medical insurance provisions shall be effective for eligible unit members who retire during the term of the Agreement.

B. The retiree medical insurance program covers the medical insurance plan only. The dental and vision plans may be continued at the unit member's expense with the insurance carrier(s) under the Consolidated Omnibus Budget Reconciliation Act (COBRA). The life insurance plan may be continued at the unit member's expense directly with the insurance carrier(s). The long-term disability plan ends upon retirement and is not portable. Should the unit member have voluntary insurance deductions, he/she may be eligible to continue the insurance plans on an individual basis directly with the insurance carrier.

C. Unit members who retire from the District and later return to work at the District in a capacity that makes him/her eligible for medical insurance will no longer continue to receive retiree medical insurance benefits.

D. Upon retirement from the District, eligible unit members shall have the option to either opt out or make an election of one (1) of the following retiree medical insurance plan options:

1. **Unit Members hired on or before June 30, 2013:**
   a. Option 1.1 A
   b. Option 1.1 B
   c. Option 1.1.C
   d. Option 2

2. **Unit members hired on or after July 1, 2013:**
   a. Option 1.2 A
   b. Option 1.2 B
   c. Option 1.2 C
   d. Option 2

OPTION 1.1 (Unit members hired on or before June 30, 2013):

A. For unit members retiring early (prior to age of Medicare eligibility), and who wish to continue coverage under the District-offered retiree medical insurance program, the District shall contribute two thousand, four hundred dollars ($2,400.00) per year conditioned upon the following:

1. The unit member shall have retired after ratification/approval of this Collective Bargaining Agreement by both parties;

2. The unit member has attained his/her fifty-fifth (55th) birthday;

3. The unit member shall have served the District in a full-time, benefited position for a minimum of ten (10) consecutive years immediately preceding retirement.

4. The retiree is receiving his/her regular retirement allowance from STRS or PERS;

5. This benefit terminates at the beginning of the month in which the retiree reaches age of Medicare eligibility.

6. Upon death of retiree, the eligible surviving spouse/registered domestic partner shall not be eligible for the benefit contribution until he/she reaches age sixty (60). The surviving spouse/registered domestic partner is the spouse/registered domestic partner enrolled on the retiree's medical insurance plan at the time of retirement. If the spouse/registered domestic partner is not enrolled in the medical insurance plan at the time of retirement, the spouse/registered domestic partner is not eligible to receive the benefit contribution.

7. The eligible surviving spouse's/registered domestic partner's benefit terminates on the date the eligible surviving spouse/registered domestic partner reaches age of Medicare eligibility.

B. For bargaining unit members who retire and have served the District in a full-time, benefited position for a minimum of fifteen (15) consecutive years immediately prior to retiring, the District shall contribute two thousand, seven hundred seventy-one dollars and thirty-four cents ($2,771.34) per year toward the District-offered medical insurance program supplement to Medicare, or the actual cost of the District-offered retiree medical insurance program supplement to Medicare, whichever is less, for the life of the unit member and his/her eligible spouse/registered domestic partner, as conditioned below. The District contribution amount in effect on July 1, 2017 shall be increased annually by two percent (2%), effective October 1, 2017, and on the plan anniversary date each year thereafter. The unit member shall be eligible to receive said District contributions toward the District-offered retiree medical insurance program supplement plan, conditioned upon the following:

1. The unit member shall have retired after ratification/approval of this Collective Bargaining Agreement by both parties;

2. The unit member shall have attained his/her age of Medicare eligibility;

3. The retiree is receiving his/her regular retirement allowance from STRS or PERS;

4. The District contribution toward the District-offered retiree medical plan will continue for life of retiree or eligible surviving spouse/registered domestic partner. The surviving spouse/registered domestic partner shall be the spouse/registered domestic partner enrolled on the retiree's medical insurance plan at the time of retirement. If the spouse/registered domestic partner is not enrolled in the medical insurance plan at the time of retirement, the spouse/registered domestic partner is not eligible to receive the benefit contribution;

5. The District contribution toward the eligible surviving spouse's/registered domestic partner's supplement shall terminate should the spouse/registered domestic partner

re- marry.

C. Bargaining unit members who retire and have served the District in a full-time benefited position for a minimum of fifteen (15) consecutive years immediately prior to retiring and who qualify for retiree medical insurance benefits may elect to opt out of the medical plan option to receive a direct contribution toward the District's retiree medical insurance plan as a supplement to Medicare as noted in Option 1.1B and may elect to receive a cash payment of two thousand, seven hundred seventy-one dollars and thirty-four cents ($2,771.34) per year, payable on a quarterly basis.

The cash payment amount under Option 1.1C, if selected, is the same as the contribution amount in the year the unit member retired, regardless of when the unit member/retiree elects the cash payment.

The retiree shall be eligible to receive a cash payment payable on a quarterly basis, conditioned upon the following:

1. The unit member shall have retired after ratification/approval of this Collective Bargaining Agreement by both parties;

2. The retiree shall have attained his/her age of Medicare eligibility;

3. The retiree is receiving his/her regular retirement allowance from STRS or PERS;

4. The cash payment will end when the retiree becomes ineligible under the provisions of the applicable collective bargaining agreement;

5. The cash payment will end on the death of the retiree and does not continue for the eligible surviving spouse/domestic partner.

D. Bargaining unit members who elect to continue coverage under the District's medical plan, may change their election to a cash option during open enrollment. Unit members who elect to opt out of the medical plan option to receive a cash payment are not eligible for re-enrollment in the District's medical plan. If a retiree or eligible covered spouse/registered domestic partner drops the District's retiree medical insurance plan for any reason, he/she is not eligible for re-enrollment. Spouse/registered domestic partner is the spouse/registered domestic partner enrolled on the retiree medical insurance plan at the time of retirement.

OPTION 1.2 (Unit members hired on or after July 1, 2013):

A. For unit members retiring early (prior to age of Medicare eligibility), and who wish to continue coverage under the District-offered retiree medical insurance program, the District will contribute two thousand, four hundred dollars ($2,400.00) per year conditioned upon the following:

1. The unit member shall have retired after ratification/approval of this Collective Bargaining Agreement by both parties;

2. The unit member has attained his/her fifty-fifth (55th) birthday;

3. The unit member shall have served the District in a full-time benefited position for a minimum of ten (10) consecutive years immediately preceding retirement;

4. The retiree is receiving his/her regular retirement allowance from STRS or PERS;

5. This benefit terminates at the beginning of the month in which the retiree reaches age of Medicare eligibility;

6. Upon death of retiree, the eligible surviving spouse/registered domestic partner shall not be eligible for any benefit contribution. The spouse/registered domestic partner is the spouse/registered domestic partner enrolled on the retiree medical insurance plan at the time of retirement.

B. For bargaining unit members who retire and have served the District in a full-time, benefited position for a minimum of fifteen (15) consecutive years immediately prior to retiring, the District shall contribute two thousand five hundred ten dollars and nine cents ($2,510.09) per year toward the District-offered retiree medical insurance program supplement to Medicare, or the actual cost of the District-offered retiree medical insurance program supplement to Medicare, whichever is less, until age seventy (70), as conditioned below. The unit member shall be eligible to receive said District contributions toward the District-offered retiree medical insurance program supplemental plan, conditioned upon the following:

1. The unit member shall have retired after ratification/approval of this Collective Bargaining Agreement by both parties;

2. The unit member shall have attained his/her age of Medicare eligibility;

3. The retiree is receiving his/her regular retirement allowance from STRS or PERS;

4. The District contribution terminates on the beginning of the month in which the retiree reaches seventy (70) years of age;

5. Upon death of retiree, the eligible surviving spouse/registered domestic partner shall not be eligible for any benefit contribution. The spouse/registered domestic partner is the spouse/registered domestic partner enrolled on the retiree medical insurance plan at the time of retirement.

C. Bargaining unit members who retire and have served the District in a full-time, benefited position for a minimum of fifteen (15) consecutive years immediately prior to retiring and who qualify for retiree medical insurance benefits may elect to opt out of the retiree medical plan option to receive a direct contribution toward the District's retiree medical plan insurance program as a supplement to Medicare as noted in Option 1.2B, and may elect to receive a cash payment instead of two thousand, five hundred ten dollars and nine

cents ($2,510.09) per year, payable on a quarterly basis.

The retiree shall be eligible to receive a cash payment payable on a quarterly basis, conditioned upon the following:

1. The unit member shall have retired after ratification/approval of this Collective Bargaining Agreement by both parties;

2. The retiree shall have attained his/her age of Medicare eligibility;

3. The retiree is receiving his/her regular retirement allowance from STRS or PERS;

4. The cash payment will end when the retiree becomes ineligible under the provisions of the applicable collective bargaining agreement;

5. The cash payment will end at the beginning of the month in which the retiree turns seventy (70) years of age.

6. Upon death of retiree, the eligible surviving spouse/registered domestic partner shall not be eligible for any benefit contribution.

D. If a retiree or eligible, covered spouse/registered domestic partner drops the District-offered retiree medical insurance plan for any reason, he/she is not eligible for re-enrollment. The spouse/registered domestic partner is the spouse/registered domestic partner enrolled on the retiree medical insurance plan at the time of retirement.

OPTION 2 (All unit members regardless of hire date):

A. For unit members retiring early (prior to age of Medicare eligibility), and who wish to continue coverage under the District-offered retiree medical insurance program, the District will contribute seventy percent (70%) of the District's contribution to the unit member's premium for the retiree medical insurance program, subject to the following:

1. The unit member shall have retired after ratification/approval of this Collective Bargaining Agreement by both parties;

2. The unit member has attained his/her fifty-fifth (55th) birthday;

3. The unit member shall have served the District in a full-time, benefited position for a minimum of ten (10) consecutive years immediately preceding retirement**;**

4. The retiree is receiving his/her regular retirement allowance for STRS or PERS**;**

5. This benefit terminates on the beginning of the month in which the unit member reaches age of Medicare eligibility;

6. Upon death of retiree, the eligible surviving spouse/registered domestic partner shall

not be eligible for benefit contribution until he/she reaches age sixty (60). The surviving spouse/registered domestic partner shall not be eligible for benefit contributions for unit members hired on or after July 1, 2013.;

7. The eligible surviving spouse's/registered domestic partner's benefit terminates on the date the surviving spouse/registered domestic partner reaches age of Medicare eligibility. The surviving spouse/registered domestic partner shall not be eligible for benefit contributions for unit members hired on or after July 1, 2013.

B. Unit members who elect OPTION 2, which provides an enhanced pre-Medicare eligibility age District contribution toward medical coverage, shall not be eligible for a District contribution toward the District's medical insurance program supplement to Medicare (Option 1.1B and Option 1.2B) or the cash payment (Option 1.1C and Option 1.2C).

C. If a retiree or eligible covered spouse/registered domestic partner drops the District's retiree medical insurance plan for any reason, he/she is not eligible for re-enrollment.

Section 8. IRC SECTION 125 PLAN:

An Internal Revenue Code (IRC) section 125 Plan shall be implemented in accordance with Governmental rules and regulations for full-time faculty for premium conversion, medical reimbursement, and dependent care made available by the College District. The Federation agrees to defend, indemnify, and hold harmless the District, its officers, agents, and employees from any claims, demands, damages, or other liability, including costs and attorney's fees arising out of this section or the administration or implementation thereof. Upon valid service of a summons and complaint or of a claim under the Government Tort Claims Act, the District agrees to notify the Federation thereof and to cooperate as reasonably necessary for the defense or settlement of such action.

Section 9. Consolidated Omnibus Budget Reconciliation Act (COBRA):

Upon separation from the District, unit members may have the option to continue his/her District-sponsored medical, dental, and vision insurance plan at his/her own expense as afforded under COBRA legislation. All COBRA plans are administered directly through the District's third party administrator.

ARTICLE XX
GRIEVANCE PROCEDURE

Section 1. PURPOSE:

To provide an orderly procedure for reviewing and resolving grievances promptly.

Section 2. DEFINITIONS:

A. Grievance: A formal written allegation by a grievant that there has been a violation, misapplication, or misinterpretation of any provision of this Agreement.

Actions to challenge or change the policies of the District as set forth in the policies, rules, and regulations, or administrative regulations and procedures not included within this contract must be addressed under District policy rather than this Grievance Procedure.

B. A "grievant" may be any unit member covered by the terms of this Agreement.

C. A "day" (for the purposes of this grievance policy) is any day on which the central administrative office of the State Center Community College District is open for business.

D. The "immediate supervisor" is the first (1st) administrator having immediate jurisdiction over the grievant--not within the same bargaining unit as the grievant.

Section 3. TIME LIMITS:

A. A grievant who fails to comply with the established time limits at any step shall forfeit all rights to further application of this Grievance Procedure relative to the grievance in question.

B. Failure of the District to respond within established time limits to any step entitles the grievant to proceed to the next step.

C. Time limits and steps may be waived by mutual written consent of the parties.

Section 4. OTHER PROVISIONS:

A. Unit Member Legal Rights: Nothing contained herein shall deny to any unit member his/her rights under state or federal constitution laws.

B. Any grievance which arose prior to the effective date of this Agreement shall not be processed under this procedure.

C. Unit members may be represented by the appropriate college Federation Vice President for Grievance or his/her designee at any conference or at any level.

D. Informal Discussion--Oral: Within thirty (30) days of the time a unit member knew or reasonably should have known of an alleged grievance, the unit member, either directly or accompanied by the Federation's "VP for Grievance", or designee, shall orally discuss with his/her immediate supervisor during non-teaching hours the alleged grievance. Within five (5) days, the immediate supervisor shall give his/her oral response.

Section 5. FORMAL LEVEL:

A. Level I:

1. Within five (5) work days of the oral response, if the grievance is not resolved, it shall be stated in writing on the "Academic Grievance" form as provided by the District (and shown as Exhibit "B" of this Agreement), signed by the grievant (or Federation Representative), and presented to his/her supervisor (or designee) at the Dean level or above.

2. The supervisor or designee shall communicate his/her decision to the unit member in writing within five (5) days after receiving the grievance.

3. Within the above time limits, either the grievant (or Federation Representative) or the immediate supervisor (or designee) may request a personal conference with the other party.

B. Level II:

1. In the event the grievant is not satisfied with the decision at Level I, he/she may appeal the decision on the appropriate form to the College/Campus President, or his/her designee, within five (5) days.

2. This statement shall include a copy of the original grievance and a written copy of the decision rendered by the unit member's supervisor or designee.

3. The College/Campus President, or his/her designee, shall communicate the decision to the grievant in writing within seven (7) days of receiving the appeal. Either the grievant (or Federation Representative) or the College/Campus President (or his/her designee) may request a personal conference within the above time limits.

C. Level III:

1. If the grievant is not satisfied with the decision at Level II, he/she may, within five (5) days, appeal the decision on the appropriate form to the Chancellor or his/her designee.

2. This statement shall include copies of the original grievance and appeal and written copies of the decisions rendered.

3. The Chancellor, or his/her designee, shall communicate his/her decision in writing to the grievant within fifteen (15) days.

D. Level IV--Arbitration:

1. Within fifteen (15) work days after receipt of the decision of the Chancellor, the Federation may, upon written notice to the Chief Human Resources Officer, submit the grievance to arbitration under and in accordance with the prevailing rules of California State Mediation and Conciliation Services. Only the Federation (exclusive representative) may demand arbitration

2. Powers of the Arbitrator: After due investigation, it shall be the function of the arbitrator, who is empowered except as his/her powers are herein limited, to make a decision in cases of alleged violation of the specific articles and sections of this Agreement and to determine the arbitrability of any grievance where arbitrability is questioned by either party.

3. The arbitrator shall have no power to:

   a. Add to, subtract from, disregard, alter, or modify any of the terms of this Agreement;

   b. Establish, alter, or modify any salary structure;

   c. Rule on any of the following:

      i. Termination of services of, or failure to reemploy, any first- or second- contract unit member;

      ii. Any matter involving any unit member's evaluation, except procedural matters;

   d. All fees and expenses of the arbitrator shall be shared equally by the Board and the Federation. Other expenses shall be borne by the party incurring them. Neither party shall be responsible for the expense of non-employee witnesses called by the other.

4. The decision of the arbitrator shall be final and binding on all parties.

ARTICLE XXI
COMPENSATION

Section 1. SALARY:

For Salary Schedule refer to Exhibit A.

For 2018-19

- 3.00% if COLA ≥ 2.50%
- 2.50% if 2.00% ≤ COLA < 2.50%
- 2.00% if 1.50% ≤ COLA < 2.00%
- 1.00% if 1.00% ≤ COLA < 1.50%
- 0.75% if COLA < 1.00%

For 2019-20

- 3.00% if COLA ≥ 2.50%
- 2.50% if 2.00% ≤ COLA < 2.50%
- 2.00% if 1.50% ≤ COLA < 2.00%
- 1.00% if 1.00% ≤ COLA < 1.50%
- 0.75% if COLA < 1.00%

For 2020-21

- 3.00% if COLA ≥ 2.50%
- 2.50% if 2.00% ≤ COLA < 2.50%
- 2.00% if 1.50% ≤ COLA < 2.00%
- 1.00% if 1.00% ≤ COLA < 1.50%
- 0.75% if COLA < 1.00%

"COLA" means funded COLA.

Section 2. SALARY DISPUTE:

Any dispute pertaining to the salary provisions contained herein is subject to the Grievance Procedure of this Agreement. Members may dispute initial salary placement or class advancement within thirty (30) days of the effective date of the initial salary placement or class advancement. Only the Federation may bring a grievance concerning implementation of the contract and any such grievance must be filed within ten (10) days of notice from the District of any proposed implementation of these provisions. The District will notify the Federation concerning its calculations pursuant to the salary provisions contained herein. Such notification shall be in writing. If the Federation disagrees with the calculations, it shall notify the District within ten (10) days. Such notice of the disagreement shall include calculations prepared by the Federation. The District may implement its proposed calculations, the proposed calculations from the Federation, or attempt to resolve the disagreement. If the matter cannot be satisfactorily implemented or resolved by mutual agreement, the parties shall agree to reopen negotiations regarding salaries, at which time these salary formula provisions shall be of no force or effect.

Section 3. SALARY CLASSIFICATIONS:

For Salary Classifications refer to Exhibit C. Section 4.

COACHING AND OTHER FACULTY STIPENDS:

For Stipends refer to Exhibit B. Section 5.

MFA DEGREE:

SALARY SCHEDULE A shall include the statement: A Master of Fine Arts (MFA) degree shall be compensated with a stipend equal to doctoral degree if a committee composed of two (2) faculty and two (2) management employees, all with doctoral degrees, determine the MFA is the terminal degree in an area of study equivalent to a doctorate degree and the MFA is awarded from an institution accredited at the time the degree was granted.

Section 6. PART-TIME (ADJUNCT) TEACHING CREDIT FOR INITIAL PLACEMENT ON THE SALARY SCHEDULE:

Effective July 1, 2004, initial placement on the salary schedule shall include part-time (adjunct) teaching credit (to include librarians, counselors, coordinators, colleges nurses, vocation training center and tutorial instructors) at any post-secondary institutions which are accredited by the appropriate regional accreditation agency at the time the teaching experience occurs, and must be verified by official documentation.

For each accumulated amount of thirty (30) lecture hour equivalents (LHE), one (1) year of placement shall be credited on the initial placement of the salary schedule up to a maximum of four (4) years. In no event shall placement exceed Step 6 when part-time teaching experience is combined with full-time teaching experience. Example: A part-time faculty member who has taught 3.3 semesters at nine (9) LHE would be initially placed at Step 2.

Section 7. TRAVEL OFF CAMPUS/MILEAGE:

Travel compensation for teaching off-campus classes is based upon the principle that all unit members report to campus duty at their own expense. Additional travel required to perform a District assignment is at District expense. Computation of the amount of travel compensation will be based upon the number of additional miles an off-campus assignment causes to be traveled over the miles traveled to teach on campus. Mileage compensation shall be at the rate per mile as established by the Internal Revenue Service (IRS) as the standard business deduction. The mileage rate shall become effective upon notification by the Chancellor or his/her designee. This provision does not apply to classes taught on overload. Computation of the amount of travel compensation will be based upon the following formula: (Total round trip mileage) – (Round trip mileage from unit member's home to primary campus)

i. Total round trip is defined as the total mileage from the unit member's home to the first campus, from first campus to the second campus and from second campus to

unit member's home.

ii. Primary campus is defined as the campus where the majority of the contract load is scheduled or, in the case of nonmajority, the campus where the contract unit member was hired.

Section 8. DIRECT DEPOSIT:

By filing an appropriate written notice with the District Business Office, electronic transfer of payroll to unit members' personal bank or trust account is available upon request and the unit member can disenroll at any time.

Section 9. EXTENDED CONTRACT SALARY FORMULA:

The determination of salary for Salary Schedule "A" personnel on extended contracts shall utilize the following formula:

P + (D) (N) = T

P = Annual salary figure shown for Salary Schedule "A" placement.

D = Per diem rate of pay for Salary Schedule "A" placement.

N = Number of duty days assigned beyond the number of duty days in the academic year.

T = Total extended contract salary.

Section 10. SPECIAL PAY RATES:

A. Training/Orientation – Faculty attending orientation or training on non-duty days will be paid twenty-five dollars ($25.00) per hour.

B. Special Projects – Faculty performing extra duties on non-duty days, excluding those who receive a stipend for their work (e.g. athletic coaches) or completing a special project (mutually agreed upon by the unit member and management) will be paid at the unit member's Schedule B2 lab rate per hour worked and submitted on the appropriate timesheet.

C. In the course of facilitating the completion of program review reports, if the department contains a program that does not have a full-time faculty member, the chair shall work with the appropriate Dean to identify a unit member (either full-time or part-time) to develop the report on behalf of the program. The identified unit member shall, after completion of the report and submission to the Dean, be paid up to ten (10) hours at the unit member's Schedule B2 lab rate.

Section 11. FACULTY MENTOR TO AN INTERN:

The purpose of employing faculty interns shall be in alignment with Title 5 sections 53500-53502.

A. EFFECTIVE DATE

1. The guidelines established in this document shall apply to all new unit members who do not meet the minimum qualifications outline in the Minimum Qualifications for Faculty and Administrators in California Community Colleges handbook, yet do meet the qualifications articulated in Title 5 sections 53500-53502.

B. QUALIFICATIONS FOR FACULTY MENTORS PARTICIPATING IN THE FACULTY INTERN PROGRAM

1. Faculty Mentors must meet all legal requirements to teach the course or render the service that the Faculty Intern will be providing.

2. Faculty Mentors must be full-time tenured or part-time formerly-tenured (retired) faculty members. Full-time faculty can serve as a Faculty Mentor for an intern at any District location. Upon approval by the Vice President of Instruction, if a tenured faculty in the discipline, or a formerly-tenure (retired) faculty member who is a current part-time faculty, is not available to serve as the Faculty Mentor, a non-tenured, full-time faculty member may serve as a Faculty Mentor.

C. ASSIGNMENT

1. Faculty Interns
   a. As temporary (part-time) faculty, Faculty Interns shall be assigned normally no more than one (1) course/prep during the first semester and sixty-seven percent (67%) of a full-time faculty assignment in subsequent semesters. Exceptions may be made by the Vice President of Instruction.
   b. A Faculty Intern shall be limited to two (2) years of participation in the program.
   c. As temporary faculty, Faculty Interns will be compensated along the terms specified in the Agreement Between the State Center Community College District and The Part-Time Faculty Bargaining Unit State Center Federation of Teachers.
   d. Faculty Interns may only intern under one (1) Faculty Mentor and at only one (1) college in the District in any one (1) semester. In rare instances, it is acceptable for a Faculty Intern to teach at two (2) locations in which case mileage will be compensated as per Article XVI, Section 4 of the part-time faculty agreement.

2. Faculty Mentors
   a. No qualified faculty member will be required to serve as a Faculty Mentor.
   b. The appropriate Dean, in consultation with the faculty member willing to serve as Faculty Mentor, must approve the mentor-intern assignment.
   c. Faculty Mentors shall have no more than one (1) intern during a mentor-intern assignment.

d. Faculty Mentors will be compensated as specified in Exhibit B.
e. In the event an intern is assigned to a site different than the Faculty Mentor's site, the Faculty Mentor may choose to not accept the assignment. If the Faculty Mentor chooses to accept the assignment, he/she will be compensated for mileage as per Section 7 of this Article.

D. DUTIES AND RESPONSIBILITIES

1. Faculty Intern
   a. Develop a consultation schedule with the Faculty Mentor, with additional input from the appropriate division Dean.
   b. Participate in the "Part-Time Faculty Orientation" or other appropriate college orientation as directed by the Dean.
   c. Maintain contact with the Faculty Mentor as agreed upon in the consultation schedule (typically once per week, though meeting frequency may be agreed upon based on the appropriateness to the discipline and the Intern's teaching assignment).
   d. Teach courses as assigned.
   e. Attend meetings and events as required by the appropriate Dean.
   f. Observe Faculty Mentor/other faculty in teaching environment as established in consultation schedule.
   g. Complete materials as requested regarding the program and professional development activities.
   h. Complete initial and final status reports at the beginning and end of each semester of the internship. The status reporting forms may be found on the District Human Resources website.
   i. All Faculty Interns shall be evaluated under the terms stipulated in Article XII of the part-time faculty bargaining agreement.

2. Faculty Mentors
   a. Participate in the Part-Time Faculty Orientation" or other appropriate college orientation as directed by the Dean.
   b. Provide recommendations for professional development opportunities for the Faculty Intern.
   c. Conduct no fewer than three (3) one (1) hour classroom visitation to observe Faculty Intern in the teaching environment and provide constructive feedback and positive learning suggestions.
   d. Maintain contact with the Faculty Intern as agreed upon in the consultation schedule (typically once per week, though meeting frequency may be agreed upon based on the appropriateness to the discipline and the faculty intern's teaching assignment).
   e. The topics to cover shall include, but not be limited to:
      i. curriculum planning,
      ii. teaching pedagogy, strategies and methodologies,
      iii. assessment of student work, and
      iv. review of course materials.

f. Attend meetings and events as required by the appropriate Dean.
g. Complete the Weekly Consultation Report and provide a summary report of observations of the Faculty Intern at the end of each semester.

E. APPLICATION AND SELECTION PROCESS

1. Faculty Interns
   a. For those disciplines in which a master's degree is required:
      i. Individuals applying for faculty internship positions will:
         - complete an official SCCCD Application for Academic Employment,
         - provide transcripts verifying the units completed in his/her master's or doctoral program (at the University of California, the California State University, or any other accredited institution of higher education), and
         - include a statement specifying the courses that the applicant is planning to take to complete his/her degree.
   b. For those disciplines for which a master's degree is not expected or required:
      i. Individuals applying for faculty internship positions will:
         - complete an official SCCCD Application for Academic Employment,
         - provide a detailed resume with job history and job references,
         - provide photocopies of any and all appropriate certificates or licenses which would be required to perform work in the area in which he/she would be teaching,
         - provide transcripts verifying either:
            i. completion of an associate degree, or
            ii. progress toward the completion of an associate degree, along with a statement specifying the courses which the applicant plans to take to complete his/her degree.
         - provide verification of experience

Acceptance into the Faculty Intern program is contingent upon verification of transcripts (receipt of official transcripts). The District shall be responsible for verifying the eligibility of Faculty Interns.

ARTICLE XXII
RETIREMENT AND RETIREES

Section 1. EARLY RETIREMENT:

Unit members may elect to retire before the mandatory retirement age pursuant to the provisions of the State Teacher's Retirement Law and upon such early retirement the unit member's service with the District shall be considered terminated due to his/her taking early retirement.

Section 2. RETIREMENT CONTRIBUTION:

Unit members are required to contribute to the California State Teacher's Retirement System as provided by State Teacher's Retirement Law. The District will contribute such sums to the State Teacher's Retirement System as is required by law.

Section 3. EARLY RETIREMENT PROGRAM:

A. Eligibility:

1. Applicants for this early retirement program must have a minimum of ten (10) consecutive years of service in the State Center Community College District in a position requiring certification. A year of service is defined as working seventy-five percent (75%) of the days required by the unit member's contract of employment, or on District-paid leaves.

2. Applicants shall be between fifty-five (55) and sixty-four (64) years of age.

B. Compensation:

Annual compensation for approved projects (see #4 below) shall range between five thousand dollars ($5,000.00) and seven thousand, five hundred dollars ($7,500.00) depending upon the number of days involved, conditioned upon the following contract terms:

1. In order to be eligible for this early retirement program, the unit member must retire from the District and may not be employed in any position requiring contribution to the STRS.

2. Unit members contracted under this proposal shall be designated as consultants to the District. As consultants, they will be considered independent contractors. The District will not make contribution to OASDI.

3. Early retirement consultants shall be guaranteed annual renewable contracts for part-time service based upon the project or projects meeting a specific need of the District and providing the consultant’s work is performed in a satisfactory manner as determined by management. Projects will be subject to annual review by the

administration. Such contracts shall not be renewable after the fifth (5th) college year.

4. Under the terms of this plan, the early retirement consultant shall perform such services for the District as may be mutually agreed upon. Services to be provided by the retiree under contract will vary with the individual but shall be limited to the following:

   a. Demonstration teaching;
   b. Working on staff development and in-service programs;
   c. Assisting in the testing program;
   d. Compiling test data;
   e. Orienting and providing aid to new teachers;
   f. Updating courses of study;
   g. Articulation with high schools and colleges;
   h. Observation and evaluation of programs;
   i. Work with business and industry;
   j. Review and develop college, division, and department goals and objectives;
   k. Conduct surveys of current and former students;
   l. Activities in any area of curriculum, business, or student personnel.

5. The following formula shall be used to determine the number of days, to the nearest whole figure, to be performed by the consultant.

   Maximum Class IV, Step 25 Figure

   (Not including doctorate) = 177 Days

   $7,500 x contract days

   The actual dates of service will be determined on a mutually agreed-upon basis.

6. The early retirement consultant may choose to discontinue this program at the end of any contract year.

7. Application for this program shall be directed to the College/Campus President's office by January 1 of each college year. Late applications will not be considered. From those who apply, selection shall be made on the basis of available funds, and District need.

8. The project or projects proposed to be performed by an applicant must be mutually agreed upon by the applicant and the College/Campus President.

9. At the end of the contract, the consultant continues eligibility for retiree insurance benefits.

10. For purposes of this section, the school year shall be from August 1 to June 30.

Section 4. REDUCTION TO PART-TIME EMPLOYMENT STATUS PRIOR TO RETIREMENT:

A. California State Teacher's Retirement System (CalSTRS) Members

Reduced load contracts for unit members participating in the California State Teachers' Retirement System (CalSTRS) may be issued only when a reduced load contract immediately precedes retirement from the District and the unit member is in paid work status, performing services during the semester(s) of any reduced load contract, pursuant to the following conditions:

1. The unit member shall have reached his/her fifty-fifth (55th) birthday prior to reduction in workload;

2. The unit member shall have served in a position in the District as a member of the bargaining unit for at least ten (10) years of which the immediately preceding five (5) years were full-time employment;

3. During the period immediately preceding a request for a reduction in workload, the unit member shall have been employed full-time in a position requiring membership in this system for a total of at least five (5) years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five (5) year full-time service requirement prescribed by this section.

4. The option of a reduced load contract shall be exercised at the request of the unit member and can be revoked only with the mutual consent of the District and the unit member.

5. All reduced load contracts issued under this section must constitute at least a fifty percent (50%) assignment with corresponding pro rata pay on Salary Schedule A. The minimum number of duty days shall be equal to one-half (1/2) the number of individual unit members' contract duty days.

6. Unit members in the reduced load contract program shall be entitled to the same insurance benefits as though they were employed full-time. Time in service for purposes of determining step advancement on the salary schedule and sabbatical leave eligibility shall be as though they were employed full-time, and sick leave shall be on a pro rata cumulative basis;

7. The period of the reduced load contract, shall not exceed five (5) years.

8. The member shall contribute to the State Teachers Retirement Fund the amount that would have been contributed had the member been employed full-time.

9. The District shall contribute to the State Teachers Retirement Fund an amount based upon the salary that would have been paid to the unit member had the unit member been employed full-time and at the rate specified by the District's Board of Trustees.

10. The unit member must retire at the conclusion of the reduced load contract period.

B. California Public Employee's Retirement System (CalPERS) Members

Reduced load contracts for unit members participating in the California Public Employee's Retirement System (CalPERS) may be issued only when a reduced load contract immediately precedes retirement from the District and the unit member is in paid work status, performing services during the semester(s) of any reduced load contract, pursuant to the following conditions:

1. The unit member shall have reached his/her fifty-fifth (55th) birthday prior to reduction in workload and must not be older than seventy (70) years of age;

2. The unit member shall have served in a position in the District as a member of the bargaining unit for at least ten (10) years of which the immediately preceding five (5) years were full-time employment;

3. During the period immediately preceding a request for a reduction in workload, the unit member shall have been employed full-time in a position requiring membership in this system for a total of at least five (5) years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five (5) year full-time service requirement prescribed by this section.

4. The option of a reduced load contract shall be exercised at the request of the member and can be revoked only with the mutual consent of the District and the unit member.

5. All reduced load contracts issued under this section must constitute at least a fifty percent (50%) assignment with corresponding pro rata pay on Salary Schedule A. The minimum number of duty days shall be equal to one-half (1/2) the number of individual unit members' contract duty days.

6. Unit members in the reduced load contract program shall be entitled to the same insurance benefits as though they were employed full-time. Time in service for purposes of determining step advancement on the salary schedule and sabbatical leave eligibility shall be as though they were employed full-time, and sick leave shall be on a pro rata cumulative basis;

7. The period of the reduced load contract, shall not exceed five (5) years.

8. The member shall contribute to the Public Employees Retirement System the amount that would have been contributed had the unit member been employed full-

time.

9. The District shall contribute to the Public Employees Retirement System an amount based upon the salary that would have been paid to the unit member had the unit member been employed full-time and at the rate specified by the District's Board of Trustees.

10. The unit member must retire at the conclusion of the reduced load contract period.

C. Office Hour Obligation

The office hour obligation for instructional faculty, whose teaching assignment has been reduced due to a reduced load contract, shall be reduced by the same proportion as the amount of reduction in load. The proration for this special assignment will be based on assigned instructional LHE instead of assigned contact hours as stated below.

For the purpose of simplifying the computation of the office hour obligation of an instructor with reduction in load, the twenty (20) hour assignment shall be treated as fifteen (15) LHE and five (5) office hours.

Example: An instructor with a fifty percent (50%) reduced load, and therefore a minimum of seven and one-half (7.5) LHE instructional assignments has a two and one-half (2.5) hour office hour requirement computed as (7.5/15) x 5 = 0.5 x 5 = 2.5 office hours.

ARTICLE XXIII
INTELLECTUAL PROPERTY RIGHTS

Section 1. PURPOSE:

The District and the Federation have a mutual interest in establishing an environment that fosters and encourages the creativity of individual unit members. In accordance with that mutual goal, the purpose of this Article is to identify the owners of the copyrights to certain works that may be created by unit members.

Section 2. DEFINITIONS:

A. "Works" means any material that is eligible for copyright protection under the laws of the United States including, but not limited to books, articles, dramatic and musical compositions, poetry, instructional materials (e.g. syllabi, lectures, student exercises, multimedia programs, and tests), fictional and non-fictional narratives, analyses (e.g. scientific, logical, opinion, or criticism), works of art and design, photographs, films, video and audio recordings, computer software, architectural and engineering drawings, and choreographic works and pictorial or graphic works fixed in any tangible medium or expression.

B. "Copyright Rights" shall include all rights recognized under Section 106 of the Copyright Act of 1976, as amended.

C. "Work for Hire" shall have the same meaning as provided under Section 101 of the Copyright Act of 1976 as amended:

1. A District-supported work prepared within the scope of employment.

   "District-Supported Work" shall mean a work produced that is the result of the unit member's having received appreciable amounts of additional District support beyond that normally provided by the District in the performance of the member's assignment. District-supported work does not include works made in the course of the unit member's independent efforts.

2. A work specifically ordered or commissioned if the parties expressly agree in a written instrument signed by them that the work shall be considered a work for hire.

D. "Independent Efforts" shall mean that the ideas for the work came from the unit member; the work was not made with appreciable amounts of additional district support beyond that normally provided by the District in the performance of the unit member's assignment; and the District is not responsible for the opinions expressed in the work by the author.

E. "License" means permission to use a work. An exclusive license gives the copyright owner sole permission to claim the work. A "non-exclusive license" is one that gives permission to use a work while that same work may also be used by the party who gave the permission

and by others to whom permission is also given.

Section 3. COPYRIGHT:

A. Rights

1. Copyright rights of the unit members

The copyrights to works created by a unit member as independent efforts (as defined in Section (2)(D)) shall be owned by him/her, even if those works are created in connection with courses taught or other duties performed as unit members while they are employed by the District and in connection with their employment.

2. Copyright rights of the District

The District will own the copyright to any work created as a "work for hire" (Section (2)(C)) in accordance with the contractual definition. Any subsequent work created by the unit member as an independent effort that is related to the work for hire shall be the property of the unit member.

The unit member who created the "work for hire" (Section (2)(C)) shall have an option to acquire the work's copyright by paying the District an amount of money agreed upon by the District and the unit member.

B. Non-exclusive license

Unit members in the performance of their normally assigned duties shall have a non-exclusive license to use works they created whose copyrights are owned by the District in the following ways: (1) to reproduce such works; (2) to distribute such works (for example, to students in classes); (3) to perform such works (for example, in classroom teaching, by web casting, or by broadcasting); (4) to display such works (for example, over the web); and (5) to create derivative works (for example, companion materials or updated versions). Unit members may do these things themselves, but may not authorize them to be done by others unless they first obtain the written consent of the District.

C. Exclusive License

Unit members shall have exclusive license to works owned by them but may through their written permission, provide a non-exclusive license to the District or to other unit members to use the work in a manner prescribed in the written permission by the unit members who own the works.

If the work is considered a "Work for Hire," the copyright shall be owned by the District and may be assigned or licensed by the District without the consent or permission of the unit member.

D. The District and the unit member may enter into any other arrangement regarding the

exercise of copyright in such works as may be agreeable to both parties, including licensing, releasing, or assigning back to the unit member the fully copyrights in said works. Such agreements shall be in writing. (See Exhibit E for sample "Agreement to Purchase District Copyright.")

Section 4. RIGHTS OF DEPARTING UNIT MEMBERS:

If a departing instructor owns the copyright of a program that the District desires to continue, the District shall pay the departing instructor the market-value price for obtaining the non-exclusive right of usage for the program or an otherwise mutually agreed upon price.

Section 5. RECORDING OF COURSE SESSIONS:

By mutual agreement of the instructor and College/Campus President or designee, District education course sessions may be videotaped.

Section 6. RESPONSIBILITIES:

A. Registration of copyright

It shall be the responsibility of the party who owns the copyright to register that copyright with the United States Copyright Office.

B. Acquiring and paying for necessary rights from third parties

If the creation or use of a work requires rights to be acquired from third parties, such rights shall be acquired and paid for by the party who owns the copyright to that work. Unit members acknowledge that, in some cases, when the cost of acquiring those rights from third parties is paid by the District, this payment may constitute a "District-Supported Work," thereby fixing the ownership of the copyright with the District.

C. Dispute resolution

Disputes between unit members and the District concerning this Article shall be resolved pursuant to the grievance procedures in Article XX of this Agreement.

ARTICLE XXIV
FACULTY SERVICE AREAS AND MINIMUM QUALIFICATIONS

Section 1. FACULTY SERVICE AREAS**:**

A. Faculty service areas and competency standards are applied only in cases of lay-offs within the District.

B. Faculty service areas will be the same as the disciplines as established by the State Academic Senate for the California Community Colleges.

Section 2. MINIMUM QUALIFICATIONS:

A. Competency standards will be the same as the minimum qualifications for hiring as established in AB 1725 (Vasconcellos, 1988): Master's degree in a discipline or Bachelor's degree in a discipline and a Master's degree in a related discipline, or "equivalent" degrees/experience. Currently held credentials and/or other minimum qualifications as established in AB 1725 (Vasconcellos, 1988) shall be applicable for additional FSA(s) after initial hire only if the unit member has teaching experience in the FSA(s) (within five (5) years of the lay-off notice date).

B. The criterion for layoffs is by seniority: last in, first out. A unit member may request placement in as many different FSA's as are met by the standards in Article XX Section 2.A above. In the event of a lay-off(s), a unit member who receives a notice could then displace a less-senior unit member in any of those areas.

AGREEMENT

This Agreement made and entered into this_____day of_____, 2018, between the State Center Community College District and the State Center Federation of Teachers Local 1533, CFT/AFT, AFL-CIO, its successors and/or affiliates upon ratification as set forth in Article I of the Agreement and shall remain in full force and effect until the close of the workday of June 30, 2021.

This final settlement agreement concludes bargaining on all issues currently the subject of negotiations between the parties.

Signed and entered into this_____day of_____, 2018.

FOR THE DISTRICT

_____

FOR THE EXCLUSIVE REPRESENTATIVE

_____

EXHIBIT A

SCCCD HUMAN RESOURCES

FULL-TIME FACULTY SALARY SCHEDULE: A -- (YEARLY AMOUNTS)

(Lecture/Lab/Non-Instructional)

Effective July 1, 2018

Range	Class I	Class II	Class III	Class IV	Class V
1	$ 55,650	$ 59,477	$ 62,801	$ 66,129	$ 69,447
2	$ 58,518	$ 62,353	$ 65,675	$ 68,997	$ 72,322
3	$ 61,392	$ 65,219	$ 68,544	$ 71,869	$ 75,193
4	$ 64,263	$ 68,097	$ 71,422	$ 74,741	$ 78,063
5	$ 67,135	$ 70,967	$ 74,292	$ 77,613	$ 80,935
6	$ 70,013	$ 73,843	$ 77,166	$ 80,492	$ 83,782
7	$ 72,882	$ 76,712	$ 80,032	$ 83,359	$ 86,684
8	$ 75,765	$ 79,586	$ 82,910	$ 86,234	$ 89,556
9	$ 78,630	$ 82,460	$ 85,781	$ 89,104	$ 92,433
10	$ 81,497	$ 85,325	$ 88,656	$ 91,983	$ 95,302
11	$ 84,376	$ 88,203	$ 91,525	$ 94,852	$ 98,170
12	$ 84,376	$ 91,071	$ 94,400	$ 97,723	$ 101,051
13	$ 84,376	$ 91,071	$ 97,273	$ 100,595	$ 103,917
14	$ 84,376	$ 91,071	$ 97,273	$ 100,595	$ 103,917
15	$ 84,376	$ 91,071	$ 97,273	$ 100,595	$ 103,917
16	$ 84,376	$ 91,071	$ 97,273	$ 100,595	$ 103,917
17	$ 87,247	$ 93,946	$ 100,145	$ 103,468	$ 106,793
18	$ 87,247	$ 93,946	$ 100,145	$ 103,468	$ 106,793
19	$ 87,247	$ 93,946	$ 100,145	$ 103,468	$ 106,793
20	$ 87,247	$ 93,946	$ 100,145	$ 103,468	$ 106,793
21	$ 90,121	$ 96,824	$ 103,016	$ 106,334	$ 109,663
22	$ 90,121	$ 96,824	$ 103,016	$ 106,334	$ 109,663
23	$ 90,121	$ 96,824	$ 103,016	$ 106,334	$ 109,663
24	$ 90,121	$ 96,824	$ 103,016	$ 106,334	$ 109,663
25	$ 92,991	$ 99,691	$ 105,892	$ 109,216	$ 112,537
26	$ 92,991	$ 99,691	$ 105,892	$ 109,216	$ 112,537
27	$ 92,991	$ 99,691	$ 105,892	$ 109,216	$ 112,537
28	$ 92,991	$ 99,691	$ 105,892	$ 109,216	$ 112,537
29	$ 92,991	$ 99,691	$ 105,892	$ 109,216	$ 112,537
30	$ 95,863	$ 102,560	$ 108,760	$ 112,085	$ 115,404

EXHIBIT A

SCCCD HUMAN RESOURCES
Full-time Faculty Salary Schedule: B - (Hourly Amounts)
Effective Date: July 1, 2018

Full-time Faculty Salary Schedule B1 – Overload and Intersession Lecture

	Class I	Class II	Class III	Class IV	Class V
Step 1C	$ 45.05	$ 50.29	$ 52.71	$ 55.24	$ 58.30
Step 2C	$ 45.48	$ 50.81	$ 53.45	$ 56.07	$ 58.86
Step 3C	$ 45.92	$ 51.28	$ 53.96	$ 56.59	$ 59.43
Step 4C	$ 46.39	$ 51.80	$ 54.50	$ 57.17	$ 60.03
Step 5C	$ 46.87	$ 52.31	$ 55.04	$ 57.74	$ 60.63
Step 6C	$ 47.34	$ 52.84	$ 55.59	$ 58.32	$ 61.23
Step 7C	$ 47.80	$ 53.36	$ 56.15	$ 58.91	$ 61.84

Full-time Faculty Salary Schedule B2 – Overload and Intersession Lab

	Class I	Class II	Class III	Class IV	Class V
Step 1B	$ 38.30	$ 42.76	$ 45.05	$ 47.22	$ 49.62
Step 2B	$ 38.64	$ 43.16	$ 45.48	$ 47.70	$ 50.08
Step 3B	$ 39.02	$ 43.55	$ 45.92	$ 48.12	$ 50.54
Step 4B	$ 39.42	$ 44.00	$ 46.39	$ 48.62	$ 51.04
Step 5B	$ 39.81	$ 44.44	$ 46.87	$ 49.10	$ 51.55
Step 6B	$ 40.21	$ 44.89	$ 47.34	$ 49.59	$ 52.07
Step 7B	$ 40.61	$ 45.34	$ 47.80	$ 50.09	$ 52.59

Full-time Faculty Salary Schedule B3 – Overload and Intersession Noninstructional

	Class I	Class II	Class III	Class IV	Class V
Step 1N	$ 38.30	$ 42.76	$ 45.05	$ 47.22	$ 49.62
Step 2N	$ 38.64	$ 43.16	$ 45.48	$ 47.70	$ 50.08
Step 3N	$ 39.02	$ 43.55	$ 45.92	$ 48.12	$ 50.54
Step 4N	$ 39.42	$ 44.00	$ 46.39	$ 48.62	$ 51.04
Step 5N	$ 39.81	$ 44.44	$ 46.87	$ 49.10	$ 51.55
Step 6N	$ 40.21	$ 44.89	$ 47.34	$ 49.59	$ 52.07
Step 7N	$ 40.61	$ 45.34	$ 47.80	$ 50.09	$ 52.59

STATE CENTER COMMUNITY COLLEGE DISTRICT
2018-2021 Stipends

Coaches

Effective July 1, 2018, Coaches will receive a coaching stipend for fulfilling the duties and responsibilities as outlined in Article XIII.

Full-time faculty head coaches will receive a stipend of ten percent (10%) of annual salary. No additional duty days will be paid.

Full-time faculty with an assistant coaching assignment will receive a stipend of three thousand, two-hundred dollars ($3,200.00). Stipends may not be split among coaches. The number of assistant coaches for each sport will be set by management.

Coaches hired prior to July 1, 2018 who will be negatively impacted by the change in compensation based on a reduction of contractual duty days, will be compensated as follows:

1. The coach's compensation for 2017-2018 attributable to coaching will be calculated (coaching stipend + (daily rate x extra duty days)).

2. The 2018-2019, 2019-2020, and 2020-2021 coaching stipend is calculated based on the new stipend rate.

The total coaching stipend for 2018-2019, 2019-2020, and 2020-2021 is subtracted from the coaching compensation for 2017-2018. Any difference will be paid as an additional stipend for 2018-2019, 2019-2020, or 2020-2021 only.

Other Faculty Stipends (Effective for the 2018-19 academic year)

Department Chair	$1,894 per year
Earned Doctorate or Master of Fine Arts Degree	$2,082 per year
Graduate Student Intern Mentor	$3,723 per academic year
Music Instructors with full responsibility for student performing and competitive groups requiring travel and competition vs. other institutions.	$1,894 per year (Note: Stipend will only be authorized for assigned, not voluntary, assumption of responsibilities.)

SALARY CLASSIFICATIONS

A. CLASS I

1. Community College Instructor (or Health Services) Partial Fulfillment Credential OR

2. *Community College Instructor (or Health Services) Partial Fulfillment Credential OR

3. Community College Limited Service, or Special Limited Service, or Provisional Credential, OR

4. Certificate of Qualification for Teaching Classes for Adults (applies to noncredit only), OR

5. *Associate degree plus six (6) years appropriate occupational experience.

B. CLASS II

1. Master's degree, OR

2. Bachelor's degree plus forty-five (45) units subsequent to date of bachelor's degree and Community College Instructor fulfilled credential, OR

a. *Community College Instructor fulfilled credential, OR

b. *Community College Instructor Partial Fulfillment Credential, OR

c. Bachelor's degree plus two (2) years appropriate occupational experience.

C. CLASS III

1. Master's degree plus thirty (30) units subsequent to date of master's degree, OR

2. Master's degree and sixty (60) units subsequent to date of bachelor's degree, OR

3. *Community College Instructor credential, OR

4. * Master's degree and two (2) years appropriate occupational experience.

5. * Bachelor's degree and four (4) years appropriate occupational experience.

D. CLASS IV

1. Master's degree and forty-five (45) units subsequent to date of master's degree, OR

2. Master's degree and seventy-five (75) units subsequent to date of bachelor's degree,

OR

3. * Community College Instructor Credential plus a master's degree and two (2) years appropriate occupational experience.

4. * Master's degree and four (4) years appropriate occupational experience.

E. CLASS V

1. Earned doctorate's degree, OR

2. Master's degree and sixty (60) units subsequent to date of master's degree, OR

3. Master's degree and ninety (90) units subsequent to date of bachelor's degree, OR

4. * Community College Instructor credential with a master's degree, including sixty (60) units earned subsequent to the date of the bachelor's degree, and two (2) years occupational experience.

5. * Master's degree, including sixty (60) units subsequent to date of bachelors and four (4) years of occupational experience.

*Applies only to vocational education assignments.

EXHIBIT D

_____
Grievance No. *

ACADEMIC GRIEVANCE FORM
(For use by full-time academic bargaining unit members)

Employee name	College	Department
Date of alleged violation	Date of informal discussion	Date of oral response
Date of filing of this statement	Specific articles and sections alleged to have been violated	
Explanation of alleged violation, including all pertinent supportive facts.		
Statement of relief, remedy, action believed necessary to resolve this grievance. Signature:_____		
Level I: Step 1 – Supervisor response to grievance Signature:_____		Date of Receipt: _____ Date of Response: _____ Grievance ☐ Resolved: ☐
Level I: Step 2 – Employee/SCFT Representative response to Step 1 decision and if not acceptable, reasons for appeal to Level II Signature:_____		Date of Receipt: _____ Date of Response: _____ Decision ☐ Acceptable: Appeal ☐

*Call office of the Vice Chancellor, Human Resources to obtain a Grievance Number

Level II: Step 1 – College/Campus President/Designee response to grievance Signature:_____	Date of Receipt: _____ Date of Response: _____ Grievance Resolved: ☐ Grievance Denied: ☐
Level II: Step 2 – Employee/SCFT Representative response to Step 1 decision and, if not acceptable, reasons for appeal to Level III Signature:_____	Date of Receipt: _____ Date of Response: _____ Grievance Resolved: ☐ Grievance Denied: ☐
Level III: Step 1 – Chancellor/Designee response to grievance Signature:_____	Date of Receipt: _____ Date of Response: _____ Grievance Resolved: ☐ Grievance Denied: ☐
Level III: Step 2 – Employee/SCFT Representative response to step 1 decision and, if not acceptable, reasons for appeal to Level IV Signature:_____	Date of Receipt: _____ Date of Response: _____ Grievance Resolved: ☐ Grievance Denied: ☐
Level IV: Final and Binding Decision of the Arbitrator	Date of Receipt: _____ Date of Response: _____ Grievance Resolved: ☐ Grievance Denied: ☐

Notes: 1. Attach all responses to this form at all levels.
3. Observe timeframe requirements of pertinent policy

Revised: 10/80; 9/04; 1/07; 9/10; 7/13

EXHIBIT E

STATE CENTER COMMUNITY COLLEGE DISTRICT
CERTIFICATED MONTHLY REPORT

DUE in Payroll Dept.
By the 20th of each month

NAME OF EMPLOYEE _____ _____ _____ _____ _____
Last First Initial Month Year

Date	Explanation	Lecture Hours	Lab Hours	Other Hours
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
29				
30				
31				
	TOTAL HOURS			

District Office/Campus _____

GL # _____

Pay Rate _____

ID Number _____

In order to process this timesheet,
ALL of the above information must be completed!

Signatures:

_____
Employee

_____
Supervisor

_____
Dean/Vice President

EXHIBIT F

AGREEMENT TO PURCHASE DISTRICT COPYRIGHT

This agreement is between the State Center Community College District and _____, who is a unit member represented by the State Center Federation of Teachers. In compliance with Article XXIII Intellectual Property Rights, _____ wishes to purchase the District's right to copyright the below described material(s), and the District agrees to convey their rights in these materials for the sum of_____. Compensation for these rights is due and payable upon each party signing this purchase agreement.

The description of the materials for which the right to copyright is being purchased is as follows:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____